(2)

Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

RAYMOND STACEY, INDIVIDUALLY AND AS
CO-EXECUTOR OF THE LAST WILL OF HELEN STACEY
Petitioners

v.

CITY OF HERMITAGE, ET AL.
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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August 8, 2005

QUESTIONS PRESENTED

I. Did the Third Circuit Court of Appeals err in affirming the District Court by expansively interpreting the ***Rooker-Feldman*** doctrine to incorporate ***preclusion principles*** which divest federal courts of jurisdiction because state-court proceedings presented similar or identical issues, even though the U.S. Supreme Court recently ruled in *Exxon Mobil* that such a bloated use of ***Rooker-Feldman*** is wrong and must be rejected?

II Was the Third Circuit wrong in barring ***pro se*** claims under ***Rooker-Feldman*** where the plaintiff was ***not a party*** in state court and presented ***independent claims*** of wrongful conduct, i.e., denial of access to the courts, seizures of property without warrants, civil conspiracy, diversity breach of contracts?

III. Did the Third Circuit err by affirming the District Court's imposition of a heightened pleading standard on ***pro se*** litigants through the appellate court's demand that the ***pro se*** litigants anticipate in their complaint the legitimacy of an ***affirmative immunity defense***?

IV. Did the Third Circuit err because it could not know what it was affirming when it reviewed (and partially reversed) the District Court's summary dismissal of every claim in the complaint (for all the reasons stated in ten motions to dismiss) on conflicting grounds that the court lacked ***subject matter jurisdiction*** over plaintiffs' cause ***and*** on grounds the court could also proceed to make a decision on the ***ultimate merits***?

V. Did the Third Circuit err when it ruled *sua sponte* that the ***pro se*** plaintiff lost his judicial rights to ***self-representation*** based on the court's interpretation of foreign state-law authority, with no challenge raised below?

PARTIES TO THE PROCEEDING

Petitioners:
RAYMOND STACEY, Individually and as
Co-Executor of the Last Will of Helen Stacey;
ESTATE OF HELEN STACEY.

Respondents:
CITY OF HERMITAGE, Mercer County, Pennsylvania;
GARY P. HINKSON, Individually and in Official Capacity as City Manager of Hermitage;
EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage;
RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage;
JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage;
ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage;
JAMES PAT WHITE; Individually and in Official Capacity as Commissioner of Hermitage;
THOMAS W. KUSTER;
H. WILLIAM WHITE, III;
EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage;
CHRISTOPHER FERRY;
WATTS & PEPICELLI, Attorneys at Law;
JERRY G. CARTWRIGHT, JR., Attorney at Law;
PENN POWER CO.;
OHIO EDISON CO., thru its Employees and Agents;
RICHARD SEREDAY and
ROSEANN SEREDAY, doing business as
SEREDAY EXCAVATING;
VIROSTICK TRANSFER, thru its Owners, Employees and Agents;

WODZIANSKI & SMITH, thru its Owners, Employees and Agents;
RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents;
THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County;
ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents.

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Petitioners through counsel respectfully ask that a Writ of Certiorari issue to review the judgment and opinion of the U.S. Court of Appeals for the Third Circuit entered on November 24, 2004, and reissued on May 19, 2005.

OPINIONS BELOW

The judgment and opinion of the panel for the Third Circuit U.S. Court of Appeals was entered November 24, 2004, as an unreported decision and is set forth in the Appendix (App. 1). The memorandum order of the U.S. District Court was entered September 22, 2003; it is also unreported and is set forth in the Appendix (App. 12). The Third Circuit's order denying the Petition for Rehearing was entered on May 11, 2005 (App. 14).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The order of the United States Court of Appeals for the Third Circuit affirming in part, vacating and remanding in part the District Court's order of September 22, 2003 (summary dismissal of all Plaintiffs' claims) was issued on November 24, 2004 (App. 10). The Court of Appeals denied Petitioners' Petition for Rehearing on May 11, 2005. The certified copy of the judgment was reissued on May 19, 2005 (App. 11), in lieu of a formal mandate after its recall on April 15, 2005.

The questions presented did not arise until Petitioners received the Third Circuit Court of Appeals' opinion and judgment affirming in part, vacating and remanding in part the District Court's order of September 22, 2003, which dismissed all claims in Plaintiffs' Complaint.

Petitioners sought leave to file a Petition for Rehearing out of time and were granted permission to do so by order of the Court of Appeals. Petitioners argued therein that the Court of Appeals had erred for several reasons and in so doing relied on the jurisdictional ***Rooker-Feldman*** doctrine [1] whose expansion by the Third Circuit was explicitly rejected by this Court recently in ***Exxon Mobil***. [2]

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the United States District Court for the Western District of Pennsylvania was invoked pursuant to 28 U.S.C. §§ 1331, 1332 and 1343.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. CONST. amend. I:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. IV:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,

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[1] The doctrine is named for the cases *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and "is confined to cases...brought by state-court losers complaining of injuries caused by state-court judgments...and inviting district court review and rejection of those judgments." See ***Exxon Mobil***, *next*, at 1521-22

[2] *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. ----, 125 S.Ct. 1517 (Mar 30, 2005) (herein as "***Exxon Mobil***").

and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. V, in pertinent part:
No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. XIV § 1, in pertinent part:
[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983, in pertinent part:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. § 1654, provides:
In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

28 U.S.C. § 1738, provides:
The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States

and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

Petitioner Raymond Stacey and now deceased Plaintiff Helen Stacey filed their ***pro se*** federal Complaint on November 6, 2002, in U.S. District Court for the Western District of Pennsylvania. Mother and son filed their ***pro se*** action against the Respondents because of their involvement in and/or responsibility for the seizure and destruction of the Stacey family home and personal property on November 6, 2000, in the City of Hermitage, Mercer County, Pennsylvania. Both Plaintiffs urged civil conspiracy and diversity breach of contract claims, and Mrs. Stacey had additional claims against the lower state court judge and prothonotary (court clerk) for wrongful conduct that arose in the context of state-court injunction proceedings in Mercer County, Pennsylvania. Petitioner Raymond Stacey was ***not a party*** to his mother's state court injunction proceedings.

In the ***pro se*** Complaint, the Plaintiffs raised claims of civil conspiracy and diversity breach of contracts, , and federal constitutional claims under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the U.S. Constitution, pursuant to 42 U.S.C. § 1983 of the Civil Rights Act, a plea for federal and state investigations of a conspiracy under the Racketeer Influence and Corrupt Organizations (RICO)

statute, 18 U.S.C. § 1961 *et seq.*, and alleged violations of several Pennsylvania appellate and criminal laws.

The background to the federal Complaint is as follows:

In 1997, after heavy rains flooded the cellar of the Stacey home, the City of Hermitage (City) notified Helen Stacey that conditions on her property violated the City's Property Maintenance Code, and informed her that the City would seek to have her property declared a public nuisance. See *Helen Stacey v. City of Hermitage*, 789 A.2d 772, 773 (Pa.Commw.Ct. 2001).

In 1998, the City gave Helen notice that her property was in violation of the newly adopted Property Maintenance Code and demanded that she remedy alleged violations within 30 days. *Id.* She argued that the Stacey home/building was not in danger of collapse, but was structurally sound, was not a fire hazard, and that any outstanding code violations could be adequately repaired.

Helen Stacey appealed the City's findings on the condition of the family home to the City Board of Appeals. In April 1999, the Board ruled that the conditions on the property constituted a nuisance, i.e., the property was unsafe for human habitation because it was in danger of collapse from flood damage, was a fire hazard, and was littered with rubbish or garbage. *Id.*

Helen Stacey challenged these findings in an appeal to the Pennsylvania Court of Common Pleas in Mercer County. In April 2000, that court found that the Stacey building was not a fire hazard, but affirmed the rest of the City Board's findings. *Id.*

The City began action to have the family home demolished. In June 2000, the City notified Mrs. Stacey that

she must cure the structure's deficiencies within 30 days. Her son Raymond, who was her agent, had her contractor backfill the basement to remedy the problem, and asked the City for an extension of time to complete the repairs. The City denied the extension. *Id.*, at 773-774.

On August 30, 2000, Helen Stacey through her attorney filed a petition for a temporary injunction to prevent the City from demolishing the family home and to order the City Board to hold a hearing regarding the demolition. Her son, Petitioner Raymond Stacey, was **not a party** to the state court injunction proceedings.

Mrs. Stacey argued that she was arbitrarily denied a hearing before the Board on the issue of demolition of the family home which contained large amounts of uncondemned personal property, that she was not notified of her right to appeal the City's decision to bulldoze her residence, that the building was not without value and that all of its deficiencies could be repaired to Code. *Id.*, at 774.

Several times from August through November 6, 2000—on the known dates of August 28 and 31, October 19 and November 6—the City caused different groups variously comprised of City police, solicitor, commissioner, firemen, building inspectors, appraisers, utility workers and/or agents of the moving company or demolition company, to break into the Stacey home and search for evidence and seize and/or destroy real and personal property[3] without consent, warrants or court orders. At one point, the police chief physically removed Raymond Stacey from the home and threatened his arrest.

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[3] Including irreplaceable family photographs, original artwork, tax returns and receipts, personal papers, heirlooms, collectible books and magazines, and much more

On August 30-31, 2000, the trial court granted Mrs. Stacey a temporary injunction restraining the City from proceeding with the demolition, and set a hearing for a permanent injunction. At the hearing on September 5, 2000, the trial court held that it was bound by its decision of April 19, 2000, that "the structure was unsafe, [that] it would be unreasonable to repair [and Helen] Stacey was not entitled to a hearing before the Board because no timely appeal was filed. Accordingly, the trial court entered a decree nisi vacating the temporary injunction." *Id.*, at 774

Two days later on September 7, 2000, pursuant to Pennsylvania appellate procedure, Mrs. Stacey through her attorney filed a notice of appeal with the prothonotary (clerk of courts) for an immediate appeal from the decree nisi. The clerk refused to docket or process the notice of appeal then when the decree nisi was entered, and again later on November 6, 2000, when the decree became final. The clerk's actions violated Pennsylvania's rules of appellate procedure. See Pennsylvania Rule of Appellate Procedure 311(a)(4)(ii) (immediate appeal from decree nisi dissolving injunction), Rule 902 (appeal as of right), Rule 905 (notice of appeal filed with prothonotary).

Mrs. Stacey also through her attorney filed exceptions to the decree nisi. On November 6, 2000, a final hearing was scheduled on her challenge to the dissolution of the temporary injunction. Her attorney failed to appear at the hearing, failed to inform the Staceys that the hearing was taking place, and failed to notify Helen Stacey that her earlier notice of appeal was not perfected.

At the final hearing, the trial court reaffirmed the decree nisi denying Mrs. Stacey a permanent injunction and dissolving the temporary injunction against the City's demolition of the family home. *Helen Stacey v. City of Hermitage*, 789 A.2d at 774. Within hours of the final order,

in the afternoon of November 6, 2000, the City had the Stacey home destroyed along with all of Petitioners' uncondemned personal property which was still inside.

Helen Stacey appealed the state trial court's final order to the Pennsylvania Commonwealth Court. The Commonwealth Court ruled that the only issue adjudicated at the injunction hearing was whether demolition of the Stacey home was the appropriate remedy for building code violations. *Id.*, at 774-775.

The only question addressed by the Commonwealth Court was whether or not the structure should have been demolished by the City. Mrs. Stacey argued that the City denied her a full and fair hearing on the issue of demolition, and denied her an adequate opportunity to make repairs. *Id.*, at 774-775.

The Commonwealth Court affirmed the trial court's order denying Mrs. Stacey injunctive relief, *id.*, at 777, i.e., the state appellate court concluded that demolition of the Stacey home was the appropriate way to remedy the building code violations.

Petitioner Raymond Stacey was ***not a party*** to the Pennsylvania state court injunction proceedings pursued by his mother, Helen Stacey. On November 6, 2002, they filed their ***pro se*** suit for damages in federal District Court for the Western District of Pennsylvania.

Plaintiff Helen Stacey died in May 2003, and her son, Plaintiff Raymond Stacey, as co-executor of her last will, was substituted in her place by the District Court. (App. 6, n.1)

The District Court dismissed the Complaint (App. 13) and a timely appeal was taken to the Third Circuit Court of Appeals (App. 2).

The Third Circuit, relying on *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 364 F.3d 102 (3rd Cir.2004) ("***Exxon I***"), held under an expansive interpretation of ***Rooker-Feldman*** that the District Court had no jurisdiction to entertain any claim previously litigated in state court. (App. 6-7) The Third Circuit also ruled that claims relating to the Defendants' wrongful conduct prior to actual demolition of the Stacey residence were not within the subject-matter jurisdiction of the District Court (App. 7). But the Third Circuit did ***not consider*** (1) independent claims of wrongful conduct subsequent to and during the actual destruction of the Staceys' property, i.e., seizures of property without warrants, denial of access to the courts, civil conspiracy, (2) diversity claims for breach of contract, and (3) the fact that Plaintiff Raymond Stacey was ***not a party*** and did not litigate in state court during Mrs. Stacey's injunction proceedings.

The Third Circuit went on to assess the ultimate merits of a RICO claim and dismissed for failure to state a claim. (App. 7-8) The court disposed of other claims brought under the state criminal laws for lack of standing.

The Third Circuit ruled that the state clerk of court and the state court judge were immune from suit (App. 8), though at the pleading stage of the proceedings no evidence as to their conduct had yet come before the District Court.

Petitioners' claims of malpractice against their attorneys were adjudged sufficient to state a claim for relief (App. 8). The Estate claim that City lien procedures deprived Helen Stacey of due process of law was not dismissed (App. 8). Through allusion in a footnote to the *sua sponte* application of Florida law to the federal statute guaranteeing the right of self-representation, the Third Circuit sought to limit Plaintiff Raymond Stacey's federal statutory privileges to proceed ***pro se*** as co-executor of Mrs. Stacey's estate (App. 9). See 28 U.S.C. § 1654.

On December 4, 2004, Petitioner Raymond Stacey, still proceeding ***pro se***, filed a motion for extension of time to file a petition for rehearing. The extension was granted, but he missed the deadline because he received the order one day after the filing was due.

On December 22, 2004, the Court of Appeals issued its certified judgment of November 24, 2004, in lieu of a formal mandate. By letter of December 24 to the court clerk, Petitioner explained his failure to file a petition for rehearing.

On January 11, 2005, the District Court on remand ordered Petitioner to file an amended complaint by February 4, 2005.

On February 4, 2005, Petitioner filed a ***pro se*** motion asking the District Court to suspend proceedings pending the filing of a Petition for Writ of Certiorari.

On February 22, 2005, Petitioner, still ***pro se***, mailed to the U.S. Supreme Court his Petition for Certiorari which the clerk did not docket because it was received out of time and returned to Petitioner.

Meanwhile, on March 10, 2005, Judge Rendell of the Third Circuit granted Petitioner's motion to file a Petition for Rehearing out of time.

The Petition for Rehearing, prepared by counsel, was timely filed on March 30, 2005, pursuant to the Third Circuit order.

On April 11, 2005, Plaintiffs, through counsel, filed in District Court a motion to stay the proceedings pending disposition of the petition for rehearing. A revised complaint, as ordered, was attached to the motion, even though Petitioners objected to amending the Complaint before the Court of Appeals had a chance to act on the rehearing. The

District Court denied the motion for stay anyway. However, the same day, April 15, 2005, the Third Circuit recalled its mandate, effectively staying the lower court from acting by withdrawing jurisdiction.

Plaintiffs' Petition for Rehearing was denied on May 11, 2005, by the Third Circuit Court of Appeals, and the mandate, i.e., the judgment of November 24, 2004, was reissued on May 19, 2005.

On May 31, 2005, Petitioners filed with the Third Circuit a motion for stay pending the filing of a petition for certiorari in the U.S. Supreme Court. Objections to the motion were submitted by the defendant City and the prothonotary. The Third Circuit has yet to dispose of this motion for stay.

REASONS FOR GRANTING THE PETITION

I. The Third Circuit Court of Appeals created a *conflict* with other circuits and also refused to abide by Supreme Court authority when the Third Circuit divested the District Court of jurisdiction in reliance on the Third Circuit's deliberate expansion of the *Rooker-Feldman* doctrine to incorporate preclusion principles

The Third Circuit Court of Appeals in its holding has departed from the accepted course of judicial procedure and has failed to revise or reconsider its judgment carried out in complete reliance on a doctrine the expansion of which was recently rejected by the U.S. Supreme Court. The Circuit Court's apparent refusal to adhere to precedent as now established by the U.S. Supreme Court is a failing which creates an important question of law that will have to be settled by the U.S. Supreme Court.

In affirming the District Court, the Third Circuit relied on ***Exxon I***, which "misperceived" and over extended ***Rooker-Feldman***, and was soundly reversed last March by a unanimous U.S. Supreme Court in ***Exxon Mobil*** (at 1522).

Exxon I, having been reversed, cannot now be relied upon by the Third Circuit to govern the adjudication of Plaintiffs' claims.

The Third Circuit in the instant case erroneously concluded that the District Court lacked jurisdiction under the ***Rooker-Feldman*** doctrine over any claims identical to those on which the state court reached a final judgment (App. 6-7). The appellate court wrongly decided that "[b]ecause these claims were actually litigated in state court, the District Court had no jurisdiction to entertain them," citing ***Exxon I***, at 106. (App. 7)

This line of analysis has been rejected by the U.S. Supreme Court, which held that the jurisdictional ***Rooker-Feldman*** doctrine is ***not*** preclusion-based. The Supreme Court rejected the application of ***Rooker-Feldman*** to bar adjudication of claims in federal court ***simply because identical claims were brought in state court***:

> [N]either *Rooker* nor *Feldman* supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or a related question while the case remains *sub judice* in a federal court.

Exxon Mobil, at 1527.

Furthermore, if a federal plaintiff "present[s] some ***independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party***..., then there is jurisdiction and state law determines

whether the defendant prevails under principles of preclusion." (Emphasis added). ***Exxon Mobil***, at 1527, citing *GASH Associates v. Village of Rosemont, Ill.*, 995 F.2d 726, 728 (7th Cir. 1993).

In this respect, the Third Circuit holding is in conflict with the use of ***Rooker-Feldman*** in the Fourth, Sixth, Seventh and Ninth Circuits. See, e.g., *Washington v. Wilmore*, 407 F.3d 274, 279-280 (4th Cir. 2005); *Stemler v. Florence*, 350 F.3d 578, 589 (6th Cir. 2003); *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 554 (7th Cir. 1999); *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

Mrs. Stacey's Estate is raising independent claims as to malpractice, diversity breach of contracts, civil conspiracy and deprivation of federal constitutional rights. Since the injuries alleged in the ***pro se*** Complaint are ***distinct*** from the state court judgment, i.e., Plaintiff maintains she suffered injuries ***apart*** from the loss of the injunction in state court, such claims are not "inextricably intertwined" with the state judgment and ***Rooker-Feldman*** does not apply. The Estate is not seeking to overturn the dissolution of the injunction in state court, but is seeking to vindicate federal rights and to seek relief from injuries inflicted by wrongful conduct of the Defendants which is distinct in nature from the loss suffered in state court. See *Noel v. Hall*, 341 F.3d at 1163-1164 (9th Cir. 2003) (cited with approval by ***Exxon Mobil***); *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411 (3d Cir. 2003).

Rooker-Feldman applies only when the injury of which the federal plaintiff complains was caused by the state-court judgment itself, rather than an independent out-of-court or later injury that the state court may not have considered and failed to remedy. Deceased Plaintiff Helen Stacey in her federal suit is complaining of injuries caused by Defendants' wrongful acts that are independent and distinct from any

injury caused by dissolution of the injunction in the state court. See ***Exxon Mobil*** at 1527. Mrs. Stacey in the federal Complaint asserts ***injury from wrongful conduct of the Defendants*** and ***not*** from any injury caused by the state-court judgment itself. Thus, the ***Rooker-Feldman*** doctrine is not a bar to the District Court's jurisdiction over the Estate's federal claims. *Ibid.* Mrs. Stacey complained of property seizures without warrants and obstruction of her right of access to the courts by the court clerk and through the City's destruction of her legal claim before appellate review could be had, in violation of the First, Fourth and Fourteenth Amendments. See *Soldal v. Cook County Illinois*, 506 U.S. 56, 63 (1992); *Lewis v. Casey*, 518 U.S. 343 (1996).

As emphasized in ***Exxon Mobil*** by Justice Ginsburg for the unanimous Supreme Court:

> The *Rooker-Feldman* doctrine...is confined to cases of the kind from which the doctrine acquired its name: cases brought by ***state-court losers complaining of injuries caused by state-court judgments*** rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. (Emphasis supplied.)

Exxon Mobil, 125 S.Ct. at 1521-22. Plaintiff Raymond Stacey was ***not a party*** to the state action, so he is ***not*** a "state-court loser," and Mrs. Stacey was not complaining of injuries caused by the state-court judgment, but of ***independent injuries*** caused through federal constitutional violations, e.g., seizures without warrants and obstruction of her access to the courts. Except for *Rooker* and *Feldman*, this Court has never used the doctrine to dismiss an action for lack of jurisdiction. ***Id.***, at 1523.

Rooker-Feldman applies when "the injury of which [the federal plaintiff] complains was caused by the [state court]

judgment" itself rather than an "independent ...injury out of court" that the state court failed to remedy. *GASH*, 995 F.2d. at 729.

Justice Ginsburg also held that the ***Rooker-Feldman*** doctrine is ***distinct from the affirmative defense of preclusion***. ***Exxon Mobil***, at 1527. Res judicata is an affirmative defense and must be pleaded affirmatively. See *Iacaponi v. New Amsterdam Casualty Co.*, 379 F.2d 311 (3rd Cir. 1967). The U.S. Supreme Court stresses in ***Exxon Mobil*** that preclusion in federal litigation following a judgment in state court depends on the application of the Full Faith and Credit Act, 28 U.S.C. § 1738. ***Exxon Mobil***, at 1527.

The ***Rooker-Feldman*** doctrine should not be confused with the concept of res judicata. Concurrent jurisdiction permits overlapping and even identical claims to proceed in parallel in state and federal courts as long as the claims asserted in the federal action do not seek to overturn the determination reached in the state court action.

A federal district court has subject-matter jurisdiction to entertain the claims and may dismiss them only if the defendant has asserted the affirmative defense of preclusion, i.e., estoppel or res judicata, ***and then only in full conformance with the preclusion law of the relevant state under the Full Faith and Credit Act, 28 U.S.C. § 1738.***

The defense of res judicata is an affirmative defense that was never raised by any of the Defendants in their motions to dismiss in the District Court. See Fed. Rule Civ. Proc. 8(c). Furthermore, under res judicata, the court ***must*** determine whether the party against whom the defense is raised had a full and fair opportunity to pursue its claims in the previous state proceeding. The District Court never engaged in such an inquiry.

The District Court had subject-matter jurisdiction to entertain Plaintiff Raymond Stacey's claims, as well as the claims of the deceased Plaintiff Helen Stacey, and could dismiss them only if the Defendants successfully asserted the affirmative defense of preclusion in conformance with the state's preclusion law under the Full Faith and Credit Act, 28 U.S.C. § 1738. ***Exxon Mobil***, at 1527. No such defense has been raised apparently because the Defendants, like the Third Circuit panel, "misperceived the narrow ground occupied by *Rooker-Feldman*," ***which is jurisdictional and not identical to preclusion doctrines that are not jurisdictional***. ***Id.***, at 1522, 1527. The only preclusion analysis argued by Defendants was raised ***through application*** of the ***Rooker-Feldman*** doctrine to dismiss Plaintiffs' claims.

The doctrine of res judicata, however, does ***not*** foreclose adjudication of constitutional questions within the district court's jurisdiction. If res judicata as an affirmative defense has been waived, or if no full and fair opportunity to litigate was afforded to Plaintiffs in state court,

> "[t]he Supreme Court has been careful to ensure that a judgment entered without due process is not entitled to full faith and credit in any court, state or federal."

18 Wright, Miller & Cooper, *Federal Practice & Procedure* § 4469, "Res Judicata," at 633. See also *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-482 (1982); *Centifanti v. Nix*, 865 F.2d 1422 (3rd Cir. 1989).

As stated by the *Exxon Mobil* petitioners in discussing preclusion doctrine, ***Rooker-Feldman*** does not replace "that waivable affirmative defense with a nonwaivable jurisdictional bar that trumps federal jurisdiction that otherwise exists and that a federal court may invoke *sua sponte*." *Petition for Writ of Certiorari* to *Exxon Mobil Corp.*

v. Saudi Basic Industries Corp., 2004 WL 1427564 (U.S. Jun. 22, 2004) (NO. 03-1696), at 7-8.

II. The Third Circuit reversibly erred when it sought to apply the *Rooker-Feldman* doctrine to divest the District Court of jurisdiction over the claims of a *pro se* litigant who was *not a party* to the state court proceedings, and raised in a federal forum *independent claims* of wrongful conduct.

As pointed out in his recent Petition for Rehearing, Plaintiff Raymond Stacey was ***not a party*** to his mother's state court action (see also caption of the state court opinion, ***Helen*** *Stacey v. City of Hermitage* (emphasis added), *supra*). Mrs. Stacey's claims, now in her estate, as raised in the District Court seek to vindicate ***independent federal rights*** violated by wrongful acts of the Defendants, such as warrentless seizure of property and refusal of a state-court clerk to process her appeal, all of which can be considered without overturning the state-court dissolution of the injunction (see discussion in Part I above at 13-16), together with claims of civil conspiracy and diversity breach of contracts.

As a ***nonparty*** to the state proceeding, Plaintiff Raymond Stacey should be free and unfettered by ***Rooker-Feldman*** to litigate his federal claims in District Court, as reaffirmed by the Supreme Court in ***Exxon Mobil*** to the effect that "the doctrine has no application to a federal suit brought by a nonparty to the state suit." ***Id.***, at 1523, citing *Johnson v. De Grandy*, 512 U.S. 997, 1005-1006 (1994). In this respect, the Third Circuit decision barring a nonparty is in conflict with the use of ***Rooker-Feldman*** in the Sixth, Seventh and Ninth Circuits. See, e.g., *U.S. v. Owens*, 54 F.3d 271, 274 (6th Cir. 1995); *Leaf v. Supreme Court of Wisconsin*, 979 F.2d 589, 598 (7th Cir. 1992); *Bennett v. Yoshina*, 140 F.3d 1218, 1224

(9th Cir. 1998). Also, the Third Circuit panel in barring a nonparty failed to follow precedent on its own circuit. See *National R.R. Passenger Corp. v. Pennsylvania Public Utility Com'n*, 342 F.3d 242, 256-257 (3rd Cir. 2003); *Marks v. Stinson*, 19 F.3d 873, 885 n.11 (3rd Cir.1994); *Valenti v. Mitchell*, 962 F.2d 288, 297 (3rd Cir. 1992).

III. *Pro se* Plaintiffs are not required to anticipate the state actors' defense of sovereign immunity in their Complaint, nor did the District Court or the Third Circuit have any right to evaluate the worth of the state actors' anticipated defense in assessing the sufficiency of plaintiffs' claims at the pleading stage of these proceedings.

In assessing the sufficiency of threshold pleading, the court cannot burden the ***pro se*** plaintiffs with the job of anticipating an affirmative defense. To do so is to impose a heightened pleading standard on the plaintiffs. This is a practice strictly forbidden by U.S. Supreme Court authority on this subject. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998); *Kulick v. Pocono Downs Racing Ass'n, Inc.*, 816 F.2d 895 (3rd Cir. 1987). These decisions have been accorded finality, and such precedent cannot be ignored by the Third Circuit.

The federal rules governing pleading do not require the plaintiff to anticipate an immunity defense; nor do the rules require any heightened specificity in pleading. See *Gomez v. Toledo*, 446 U.S. 635 (1980); *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993).

At the pleading stage, general factual allegations of injury resulting from defendants' conduct are sufficient, because on

a motion to dismiss the Court must presume that general allegations embrace those specific facts that are necessary to support the plaintiffs' claims. See *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

The Third Circuit panel relied on *Lockhart v. Hoenstine*, 411 F.2d 455 (3rd Cir. 1969) in asserting in one sentence that the state court prothonotary was immune from liability. However, as stressed in *Rivkin v. County of Montgomery*, 838 F.Supp. 1009 (E.D.Pa. 1993), the clerk may not have absolute immunity from suit if her action was not taken pursuant to court order. The rule that clerks enjoy absolute immunity for acts done in performance of their ***discretionary*** duties ***does not extend to*** conduct relating to ***ministerial*** functions. Ministerial conduct enjoys only qualified immunity ***triggered by a showing*** that the clerk acted in good faith, pursuant to lawful authority vested in her by the state. See *Allen v. Dorsey*, 463 F.Supp. 44 (E.D.Pa. 1978).

In the instant case, the Third Circuit erred when it sought to provide blanket immunity for the clerk at the pleading stage of the ***pro se*** Plaintiffs' suit, without adjudication of proof. The Court of Appeals is not the finder of fact; it could not and did not review any evidence as to the actual conduct of the clerk or her explanation for her conduct. The appellate court is not free to say that the District Court's scrutiny of the Complaint makes it plain that under no circumstances could factual evidence exist to establish that the clerk did not act in good faith and/or abused the authority vested in her by statute. A genuine issue of material fact does exist as to whether the clerk acted pursuant to court order, erroneous direction from a judge, or on her own initiative.

The appellate court acted prematurely and erroneously in affirming the District Court's dismissal of plaintiffs' ***pro se*** Complaint against the clerk on grounds of the clerk's

absolute immunity, thus precluding any opportunity for the plaintiffs by subsequent proof to establish their claims against the clerk:

> When a federal court reviews the sufficiency of a complaint, before the reception of any evidence...its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.

Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

Plaintiffs' ***pro se*** Complaint alleges that the clerk acted either outside the scope of her office, or, if within the scope, acted in an arbitrary manner. As stressed in *Scheuer*, plaintiffs are alleging facts which demonstrate that they are seeking to impose liability on the named defendants "for what they claim--but have not yet established by proof--was a deprivation of federal rights by these defendants under color of state law":

> Whatever the plaintiffs may or may not be able to establish as to the merits of their allegations, their claims, as stated in the complaints, given the favorable reading required by the Federal Rules of Civil Procedure, are not barred by the Eleventh Amendment.

Scheuer, at 238.

The Court of Appeals has erroneously and prematurely determined that the clerk enjoys absolute immunity from suit. However,

> If the immunity is qualified, not absolute, the scope of that immunity will necessarily be related to facts as yet not established either by affidavits, admissions, or a trial record.... It can hardly be argued, at this late date, that

> under no circumstances can the officers of state government be subject to liability....

Scheuer, at 242-43.

In Pennsylvania, exclusive jurisdiction over appeals is vested in the appellate courts. See 42 Pa.C.S.A. § 762 ("Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas"). Under *Stump v. Sparkman*, 435 U.S. 349 (1978), a judge can lose immunity for actions taken in complete absence of all jurisdiction. See *Mireles v. Waco*, 502 U.S. 9 (1991); accord *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760 (3rd Cir. 2000). In *Stump*, this Court gave the example of a probate judge trying a criminal case: "[H]e would be acting in the clear absence of jurisdiction and would not be immune from liability." *Id.* at 357 n.7. A common pleas judge with no statutory authority cannot assume appellate jurisdiction to effectuate dismissal of an appeal or order the court clerk to refuse to process the notice of appeal. See *Mireles*, at 12-13; *Maestri v. Jutkofsky*, 860 F.2d 50, 52-53 (2nd Cir. 1988).

A judge also loses immunity for ***nonjudicial acts***—acts that are not normal functions of the judge and outside the expectations of the parties. *Mireles*, at 12. It is not a normal function of Pennsylvania common pleas judges to usurp appellate jurisdiction, and to counsel or to order court clerks to refuse to process appeals. The expectation of Plaintiff Helen Stacey in filing her "first" notice of appeal was that she would be dealing with the appellate courts, not the trial judge, under appellate rules of procedure. See *Mireles*, at 12 (the test of "expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity"), quoting *Stump*, 435 U.S. at 362; accord *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d at768+. See also Pa.R.A.P. Rule 311(a)(4)(ii) (immediate appeal from decree nisi dissolving injunction), Rule 902 (appeal as of right), Rule 905 (notice of

appeal filed with court clerk); 42 Pa.C.S.A. § 762 (exclusive jurisdiction of appeals in appellate court).

The District Court erred in prematurely dismissing the ***pro se*** Complaint without receiving evidence of plaintiffs' claim against the state court clerk and judge, and the Court of Appeals erred in affirming that decision. Furthermore, the party asserting Eleventh Amendment immunity (and standing to benefit from its acceptance) bears the burden of proving its applicability. It is an affirmative defense that must be proved by the party asserting it. *Christy v. Pennsylvania Turnpike Com'n*, 54 F.3d 1140, 1144 (3rd Cir. 1995); *Chisolm v. McManimon*, 275 F.3d 315 (3rd Cir. 2001). Because the issue of Eleventh Amendment immunity sufficiently partakes of the nature of a jurisdictional bar, it is an issue that may be raised at any time during the pendency of the case. See *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 131 F.3d 353 (3rd Cir. 1997), cert. granted, 525 U.S. 1063, affirmed, 527 U.S. 666 (1999).

Given the rules of notice pleading, plaintiffs had no obligation in their ***pro se*** Complaint to anticipate affirmative defenses. Plaintiffs withstand dismissal by simply resting on the assumed truthfulness and liberal construction afforded their ***pro se*** Complaint under the rules of notice pleading. See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1 (1983); *Milhouse v. Carlson*, 652 F.2d 371, 373 (3rd Cir. 1981). A federal court determines whether a case is one arising under federal law based on what necessarily appears in the plaintiff's statement of his own claims in the complaint, unaided by anything alleged in anticipation or avoidance of defenses. The Plaintiffs here were not required to prove at this stage of the proceedings that either the judge or the clerk was not entitled to immunity. ***An immunity defense must be proved by the parties who are***

asserting it. See *Blatchford v. Native Village of Noatak and Circle Village*, 501 U.S. 775 (1991). The District Court had no power to reach the merits or assess the sufficiency of evidence ***prior to trial***, by virtue of its consideration of a motion to dismiss.

IV. The Third Circuit erred in affirming the District Court's summary disposition of all claims made in Plaintiffs' Complaint (even though the appellate court salvaged three of the claims and gave Plaintiff a chance to amend the Complaint) because the District Court's jurisdictional rationale for dismissing could not be reconciled with its disposition on the merits

The District Court, given the summary limitations of its Memorandum Order of dismissal of September 22, 2003 (App. 12), made it impossible for the Court of Appeals to know what it was affirming. The District Court in granting all the motions to dismiss the Complaint "for all of the reasons stated therein" (App. 13), was simultaneously dismissing on conflicting grounds that it ***lacked subject-matter jurisdiction*** over the Plaintiffs' cause of action ***and*** dismissing on grounds that it had the power to proceed to ***assess the ultimate merits*** of Plaintiffs' claims. If a federal court lacks subject-matter jurisdiction, it may not reach the merits of a case. *Christianson v. Colt Indus. Op. Corp.*, 486 U.S. 800, 818 (1988).

Dismissal for lack of jurisdiction over the subject matter cannot be reconciled with a dismissal (apparently with prejudice, but not so stated) grounded on the court's assessment of the ultimate merits of Plaintiffs' claims. The District Court assessed questions of fact on their merits while at the same time wrongfully asserting that it lacked subject-matter jurisdiction:

> "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 7 Wall. 506, 514, 19 L.Ed. 264 (1868).

Steel Co. 523 U.S. at 94. *Steel Company* stands for the proposition that a court cannot resolve contested questions of law if it believes its jurisdiction is in doubt. However, this is exactly what the District Court did, i.e., resolved questions of law and fact while dismissing for lack of subject-matter jurisdiction.

The Court of Appeals had to *sua sponte* construct a rationale for the District Court's actions, because it was never supplied with an explanation, coherent or otherwise, by the District Court. (App. 13) The Court of Appeals should not have affirmed the District Court when the rationale for dismissal was both concealed and in conflict with controlling precedent. Finally, neither the appellate nor the district court ever considered the fact that the Plaintiffs were raising claims of ***civil conspiracy, diversity breach of contract, and seizures of property without warrants*** and a claim that the actual demolition of the Stacey home by the City was ***retaliatory obstruction of access to the courts.*** All these claims were alleged in their ***pro se*** Complaint, which should have been "liberally construed" as "true" in favor of the ***pro se*** Plaintiffs. See *Estelle v. Gamble*, 429 U.S. 97, 99, 106 (1976). No Defendant ever responded in any fashion whatsoever to the raising of such claims. Nor did the district or appellate court make any statement as to why such claims should be dismissed.

V. The Third Circuit erred when it suggested *sua sponte*, in the absence of Third Circuit authority on the subject, that the Plaintiff had lost his federal rights to self-representation based on the court's interpretation of foreign state-law authority.

The Third Circuit *sua sponte* mentions in passing (in a footnote) that it is relying on *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997) for the novel proposition that Plaintiff cannot proceed ***pro se*** when representing his mother's estate as executor. However, the court in *Pridgen* admitted that the only other circuit court to address this issue considered it in banc and was equally divided. The Eleventh Circuit panel in fact reversed its district court when the lower court attempted to stop an executor from proceeding, ***pro se,*** on the estate's behalf. *Reshard v. Britt*, 819 F.2d 1573 (11th Cir. 1987), *panel opinion vacated and rehearing granted*, 831 F.2d 222, *district court affirmed by divided court on rehearing in banc*, 839 F.2d 1499 (11th Cir.(Fla.) 1988).

The Second Circuit in *Pridgen* announced that its ruling was made in reliance on the dissent to the panel opinion. A dissent relied on by the Second Circuit does not supply controlling authority on the Third Circuit. Furthermore, the Second Circuit stated that it was ***not*** deciding the issue categorically because the issue was resolved by an admission that there were legitimate creditors of the estate. No such admission has been made by Plaintiff in the instant case. The Third Circuit also ignored the ruling made in *Jaco v. Bloechle*, 739 F.2d 239 (6th Cir 1984), in which it was held that a Section 1983 action could most definitely be brought by the executor of an estate.

In *Pridgen*, the Second Circuit's limited holding was made in respect to the estate of a deceased ***defendant*** whose executrix could not appear ***pro se*** where the estate had

legitimate creditors whose interests were implicated. This decision was also grounded in Florida probate law.

No objection to the ***pro se*** Plaintiff's standing to proceed as the representative of his mother's estate was ever raised by any Defendant prior to the Third Circuit's *sua sponte* suggestion while reviewing the District Court's order of dismissal. But in the Florida case, such objections were actually raised, based on Florida probate law. It was error for the Third Circuit to substitute state law in Florida for state law in Pennsylvania in a federal court case with respect to a ***pro se*** action proceeding under 42 U.S.C. § 1983 and 28 U.S.C. § 1654, and it was wrong for the Third Circuit to rely on a dissent written indirectly on another circuit to supply it with precedent in the instant case.

The right to self-representation is an important and fundamental entitlement in our system. For an appellate court to eliminate the right through a casual, footnoted, non-precedential allusion to unreliable authority on some other circuit is disingenuous and improper (with a hint of punishment for the ***pro se*** plaintiff). A ***pro se*** litigant's right to self-representation is not derived from either Florida or Pennsylvania's probate laws; it is statutory under 28 U.S.C. § 1654 and cannot be eliminated in such a summary fashion without discussion or analysis of Pennsylvania probate law. The right of a party to bring an action in federal court under 28 U.S.C. § 1654 is a basic right and is a right which is accorded the highest degree of protection. See *Faretta v. California*, 422 U.S. 806 (1975)

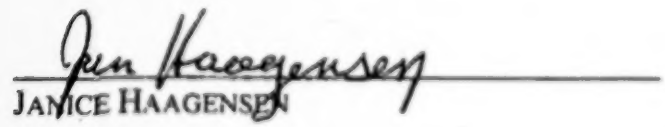
CONCLUSION

This case is important not only to Petitioners, but to the thousands of families across the United States whose residential homes and buildings have been, or will be, demolished by local governments over the years. For example, in the five year period between 1990 and 1995, in the City of Dallas, Texas, alone, 2,180 structures were demolished by the city, of which 1,902 were residential. See *Petition for a Writ of Certiorari*, Charles Freeman and Rosalyn Brown, Petitioners, v. The City of Dallas, Texas, Respondent, (U.S. May. 23, 2001) (No. 00-1755), 2001 WL 34125096 at 12.

Only this Court's guidance and supervisory powers to correct injustice, as was done in *Blaisdell* and *Holloway*, can help put a stop to local governments riding roughshod over homeowners' rights in the property they cherish. See *Blaisdell v. City of Rochester, N.H.*, 125 S.Ct. 1723 (U.S. Apr 04, 2005, to 1st Cir.) and *Holloway v. Arkansas State Bd. of Architects*, 125 S.Ct. 1725 (U.S. Apr 04, 2005, to 8th Cir.), both of which were vacated and remanded for further consideration in light of ***Exxon Mobil***.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



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Date: August 8, 2005

APPENDIX

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 03-4176

RAYMOND STACEY, Individually
and as Co-Executor of the Last Will of Helen Stacey,
Appellant

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individually and in Official Capacity as City Manager of Hermitage; EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage; RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage; JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage; ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage; JAMES PAT WHITE, Individually and in Official Capacity as Commissioner of Hermitage; THOMAS W. KUSTER; H. WILLIAM WHITE, III; EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; PENN POWER CO.; OHIO EDISON CO., thru its Employees and Agents; RICHARD SEREDAY; ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; VIROSTICK TRANSFER, thru its Owners, Employees and Agents; *WODZIANSKI & SMITH, thru its Owners, Employees and Agents; RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents; THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents

*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(WD/PA Civil No. No. 02-cv-01911)
District Judge: Honorable Robert J. Cindrich

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*2 Submitted Under Third Circuit LAR 34.1(a)
November 12, 2004

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

(Filed: November 24, 2004)

OPINION OF THE COURT

PER CURIAM

Appellant Raymond Stacey, proceeding pro se, appeals an order of the United States District Court for the Western District of Pennsylvania dismissing the civil rights action filed by him and his mother, Helen Stacey, who is now deceased, after the City of Hermitage demolished Helen Stacey's home. For the reasons that follow, we will affirm in part and vacate in part the order of the District Court.

Helen Stacey unsuccessfully tried to enjoin the demolition of her home in Pennsylvania state court. In Stacey v. City of Hermitage Bd. of Appeals, 789 A.2d 772 (Pa. Commw. 2001), allocatur denied, 806 A.2d 865 (Pa. 2002), cert. denied, 538 U.S. 977 (2003), the Pennsylvania Commonwealth Court set forth the following background.

In 1997, the City of Hermitage informed Helen Stacey that her property violated the City's property maintenance code, and that the City was proceeding to have it declared a public nuisance. In 1998, the City adopted a new property maintenance code, notified Helen Stacey that her property violated the new code and required her to remedy the violations within thirty days. Helen Stacey appealed to the City of Hermitage Board *3 of Appeals which after a hearing in April 1999, determined that the property was an attractive nuisance, unsafe for human habitation, littered with garbage and uncontrolled weeds, a fire hazard and in danger of

collapse. Helen Stacey appealed, and in April 2000 the trial court affirmed the Board's determination with the exception of its finding that the property was a fire hazard. Helen Stacey did not further appeal.

The City began proceedings to have the structure demolished. In June 2000, the City notified Helen Stacey that she had thirty days to cure the problems, and that if she failed to do so, the property would be demolished. Raymond Stacey, who had put two loads of sand in the basement to remedy the property, sought an extension of time to complete the repairs. The City denied an extension of time.

In August 2000, Helen Stacey, who had executed a power of attorney naming Raymond as her legal representative, sought a temporary injunction against the Board and the City. She alleged that she was denied a hearing on the issue of demolition, that she was not notified of her right to appeal the demolition decision, and that the structure could be restored. The trial court granted a temporary injunction and held a permanent injunction hearing. The court concluded that it was bound by its earlier order declaring the structure unsafe, that it would be unreasonable to repair the structure, and that Stacey was not entitled to a hearing before the Board because she did not file a timely appeal of the notice of demolition. The trial court vacated the temporary injunction, and after Stacey filed exceptions, on November 6, 2000, entered an order affirming its prior decree.*4 On November 7, 2000, the City demolished the structure.

On appeal, the Pennsylvania Commonwealth Court concluded that Stacey could not argue that her property was not a nuisance, and that the only issue at the injunction hearing was whether demolition of the structure was the appropriate remedy. In response to Stacey' s argument that the City denied her a hearing on the issue of demolition, the Commonwealth Court also found that Stacey did not appeal the City's notice of demolition. Rather, she asked for an extension of time to make repairs. The Commonwealth Court

also rejected Stacey's argument that the City denied her an opportunity to make repairs or sell the property because Stacey was on notice as early as 1997 that her property was in violation of the City's code. Although Raymond Stacey testified at the injunction hearing that there were buyers interested in the property, the Commonwealth Court held that he did not show that he was complying with requirements for transferring property that violated the code. The Commonwealth Court also found no merit to Helen Stacey's contention that she had no opportunity to remove her personal items because Raymond testified that he was given an opportunity to do so. Although the Commonwealth Court did not condone the City's haste in razing the property, it concluded that Stacey was afforded due process because she received notice that the demolition would occur if repairs were not made. Finally, the Commonwealth Court held that demolition of the property was the appropriate remedy.

On November 6, 2002, two years after the demolition, Helen and Raymond Stacey *5 filed the present action in District Court against the City of Hermitage and various City employees, attorneys who represented the City and the Staceys throughout the state court proceedings, a utility company, demolition company and moving company involved in the demolition, an inspector and appraiser hired by the City, Pennsylvania Court of Common Pleas Judge Thomas Dobson, who presided over the state court action, and the Court of Common Pleas prothonotary.

In their complaint, the Staceys allege that the property was not a hazard, that there were alternatives to demolition and that the demolition occurred without providing them due process. The Staceys further allege that City attorney William White denied them the opportunity to be heard on the demolition and the procedure for the inventory of items to be taken or salvaged, and that their attorney Christopher Ferry and his firm failed to seek an injunction to prevent the demolition. The Staceys also state that in August 2000, the City Police Chief, City attorney White, Commissioner James

White, the City Inspectors, workmen from the utility Penn Power Co. and moving company Virostick Transfer Company, broke into the property, and searched and seized personal property without consent, a warrant or court order. They allege that the Police Chief dragged Raymond off of the property.

The Staceys further allege that their subsequent attorney, Jerry Cartwright, failed to get a continuance of the hearing on the permanent injunction, and they did not have the opportunity to present testimony of contractors and engineers, and that he failed to attend *6 the final hearing and perfect their notice of appeal. They also allege that in October or November 2000, the City defendants, and their inspectors and appraisers, searched the property without consent, warrant or court order. The Staceys further aver that the prothonotary did not process their notice of appeal of the denial of injunctive relief, and that Judge Dobson was biased against them and had ex parte discussions with the City's attorney. Finally, they allege that the City filed a lien against the property for the demolition charges without affording them procedural due process.

Based upon these allegations, the Staceys claim violations of their constitutional rights to procedural and substantive due process, their right to be free from unreasonable searches, and their right to privacy, as well as conspiracy and violations of the Racketeer Influence & Corrupt Organizations Statute, 18 U.S.C. §§ 1961 et seq. ("RICO"), the Pennsylvania Corrupt Actions Act, 18 Pa. Cons. Stat. § 911, and 18 Pa. Cons. Stat. § 4910, which relates to tampering with physical evidence.

Each defendant moved to dismiss the complaint on various grounds, including that the District Court lacked jurisdiction under the Rooker-Feldman doctrine, that there was no state action by the private defendants, and that the Staceys failed to state a claim under RICO and the Pennsylvania statutes. The District Court granted the motions

to dismiss "for all of the reasons stated [in the defendants' motions]." Dist. Ct. Order at 2. This *7 appeal followed.[1]

We have jurisdiction pursuant to 28 U.S.C. § 1291. To the extent the District Court concluded that it lacked jurisdiction under the Rooker-Feldman doctrine, our standard of review is plenary. Marran v. Marran, 376 F.3d 143, 149 (3d Cir. 2004). Our standard of review is also plenary for those claims that the District Court dismissed for failure to state a claim. Oatway v. American Int'l Group, Inc., 325 F.3d 184, 187 (3d Cir. 2003). In his brief, Raymond Stacey contends that the District Court did not specify its reasons for dismissal, and failed to show that no relief could be granted under any set of facts. He argues that the District Court failed to liberally construe his pro se complaint, and did not afford him the opportunity to amend it.

Because all of the defendants moved to dismiss the complaint based upon the Rooker-Feldman doctrine, we address this basis for dismissal first. The Rooker-Feldman doctrine precludes lower federal courts from reviewing decisions of a state tribunal. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 364 F.3d 102, 104 (3d Cir. 2004). *cert. granted o* [sic] *other grounds*, 2004 WL 1760036. Because Congress has conferred jurisdiction to review a state court's decision only on the Supreme Court, lower federal courts lack the power to decide claims in which the relief requested requires determining that the state court's decision is wrong. Id. A claim is barred by Rooker-Feldman in two *8 circumstances: first, if the claim was actually litigated in state court prior to the filing of the federal action or, second, if the claim is inextricably intertwined with the state adjudication. Id.

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[1] While the District Court proceedings were pending, Helen Stacey passed away and the District Court substituted Raymond Stacey, as co-executor of Helen Stacey's will, in the place of Helen Stacey as plaintiff.

Several of the Staceys' claims are identical to the claims upon which the Commonwealth Court of Pennsylvania reached a final judgment. The Commonwealth Court adjudicated the claims that the property was not a hazard, that there were alternatives to demolition, that the demolition occurred without due process, and that they were denied the opportunity to retrieve their personal property. Because these claims were actually litigated in state court, the District Court had no jurisdiction to entertain them. See id. at 106.

Some of the Staceys' other claims are inextricably intertwined with the state adjudication. A federal action is inextricably intertwined "where federal relief can only be predicated upon a conviction that the state court was wrong." Parkview Assoc. P'ship v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) (citations omitted). Applying this definition, the Staceys' claim that in August 2000 the City Police Chief, City attorney White, Commissioner James White, the City Inspectors, workmen from the utility Penn Power Co. and moving company Virostick Transfer Company, broke into the property, and searched and seized personal property without consent, a warrant or court order - and claim that in October or November 2000, the City defendants, and their inspectors and appraisers, searched the property without consent, warrant or court order - are inextricably *9 intertwined with the Commonwealth Court's decision. The alleged acts were incident to the demolition, and relief on these claims can only be predicated upon a conviction that the state court wrongly decided that the City could demolish the property.

Some of the Staceys' claims were not actually litigated in state court, and are not inextricably intertwined with the Commonwealth Court's decision, but were properly dismissed on other grounds. The Staceys do not state a claim upon which relief can be granted under RICO. See Beck v. Prupis, 529 U.S. 494, 505 (2000) (holding that a conspiracy claim under RICO must involve an act of racketeering or an act that is otherwise unlawful under the statute). In addition,

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Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED and ADJUDGED by this Court that the order of the District Court entered on September 22, 2003 be, and the same is, hereby affirmed in part and vacated and remanded in part. Each party shall bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST

/s/ Marcia M. Waldron
Clerk

Dated: November 24, 2004

Before: RENDELL, AMBRO and FUENTES, Circuit Judges.

JUDGMENT

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ATTEST

/s/ Marcia M. Waldron
Clerk

Dated: November 24, 2004

Certified as a true copy and issued in lieu of a formal mandate on 05/19/05

s/ Marcia M. Waldron
Teste:
Clerk, U.S. Court of Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND STACEY and RAYMOND STACEY as Co-Executor of the Last Will of Helen Stacey,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 02-1911
CITY OF HERMITAGE, et al.,	)	
Defendants.	)	

MEMORANDUM ORDER

This action arises from the demolition of property owned by Helen Stacey by the City of Hermitage for certain violations of the City's property maintenance code. The procedural and factual background underlying the case is extensive and has been thoroughly summarized by the Pennsylvania Commonwealth Court in Stacey v. City of Hermitage, 789 A.2d 772 (Pa. Commw. Ct. 2001). In sum, Helen Stacey vigorously contested the demolition of her property in state court which ultimately ended with the denial of her petition for appeal to the Pennsylvania Supreme Court. See Stacey v. City of Hermitage, 806 A.2d 865 (Pa. 2002). Helen Stacey and her son Raymond Stacey subsequently filed the instant action against twenty-two defendants including, the City, the City Manager, the City Chief of Police, the City Inspector, the Assistant City Inspector, the City Fire Marshall, the City Commissioner, the City Solicitor, the Court of Common Pleas Judge who presided over the state case, the prothonotary of the Court of Common Pleas for

Mercer County, Helen Stacey's counsel during the state court proceedings, two electric utility companies, and a demolition company. Plaintiffs allege federal constitutional claims under the Fourth, Fifth, Ninth, and Fourteenth Amendments pursuant to 42 U.S.C. Section 1983 of the Civil Rights Act, a conspiracy claim under the Racketeer Influence and Corrupt Organizations Statute ("RICO"), 18 U.S.C. Section 1961 et seq., and violations of various Pennsylvania criminal laws (18 Pa. Cons. Stat. Section 911, Pennsylvania Corrupt Actions Act, and Section 4911, which covers the tampering with or fabricating of physical evidence) . Each defendant, individually or jointly with one or more co-defendants, has filed a motion to dismiss which is currently pending.

After having reviewed the various motions to dismiss and supporting briefs we find that each motion should be granted for all of the reasons stated therein. Accordingly, IT IS HEREBY ORDERED that defendants' motions to dismiss (Doc. Nos. 3, 13, 15, 16, 21, 23, 25, 28, 50, 52, and 56) are all GRANTED.

The Clerk is directed to mark this case closed.

SO ORDERED this 22 day of September, 2003.

s/ Robert J. Cindrich
ROBERT J. CINDRICH
United States District Judge

cc: All counsel of record.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-4176

RAYMOND STACEY, Individually and as Co-Executor of the Last Will of Helen [St]acey,

Appellant

v.

CITY OF HERMITAGE; GARY P. HINKSON, Individually and in Official Capacity as City Manager of Hermitage; EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage; RUSSELL V. PENN, JR., Individually and in Official Capacity as City Inspector of Hermitage; JEFFREY OSBORNE, Individually and in Official Capacity as Asst. City Inspector of Hermitage; ROBERT S. GOELTZ, Individually and in Official Capacity as Fire Marshall of Hermitage; JAMES PAT WHITE; Individually and in Official Capacity as Commissioner of Hermitage; THOMAS W. KUSTER; H. WILLIAM WHITE, III; EKKER, KUSTER, MCCONNELL & EPSTEIN, Attorneys at Law, Individually and in Official Capacity as Solicitors for Hermitage; CHRISTOPHER FERRY; WATTS & PEPICELLI, Attorneys at Law; JERRY G. CARTWRIGHT, JR., Attorney at Law; PENN POWER CO.; OHIO EDISON CO., thru its Employees and Agents; RICHARD SEREDAY; ROSEANN SEREDAY, doing business as SEREDAY EXCAVATING; VIROSTICK TRANSFER, thru its Owners, Employees and Agents; *WODZIANSKI & SMITH, thru its Owners, Employees and Agents; RICHARD G. ENGLISH & ASSOC., thru its Owners, Employees and Agents; THOMAS R. DOBSON, Individually and in Official Capacity as Common Pleas Judge of Mercer County; ELIZABETH F. FAIR, Individually and in Official Capacity as Prothonotary of Mercer County, thru her Office, Employees and Agents

*(Amended per the Clerk's Order of 12/30/03)

On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. Civil No. 02-cv-01911)
District Judge: Honorable Robert J. Cindrich

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, and VAN ANTWERPEN, Circuit Judges.

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING IN BANC

The petition for rehearing filed by Appellant having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ Marjorie O. Rendell

Circuit Judge

Dated: May 11, 2005
ARL/cc: Mr. Raymond Stacey; All Counsel of Record

(1)

FILED
SEP 7 - 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 05-199

IN THE
Supreme Court of the United States

RAYMOND STACEY, INDIVIDUALLY
AND AS CO-EXECUTOR OF THE LAST
WILL OF HELEN STACEY,
Petitioners,

v.

CITY OF HERMITAGE, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DENNIS ST. J. MULVIHILL
ROBB LEONARD MULVIHILL
2300 One Mellon Center
Pittsburgh, PA 15219
(412) 281-5431
Attorneys for Respondents Richard Sereday and Roseann Sereday, d/b/a Sereday Excavating

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals properly apply the *Rooker-Feldman* doctrine to claims made by Petitioner Helen Stacey, now deceased?

2. Did the Court of Appeals properly apply the *Rooker-Feldman* doctrine to Petitioner Raymond Stacey's claims?

3. Did the Court of Appeals err in its disposition of Petitioners' claims?

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STATEMENT OF THE CASE

On November 6, 2002, Petitioners, Helen Stacey, now deceased, and her son, Raymond Stacey (collectively referred to herein as "the Staceys"), commenced this action in the U.S. District Court for the Western District of Pennsylvania. In the Complaint, the Staceys allege that Helen Stacey was the owner of certain property located in the City of Hermitage, Mercer County, Pennsylvania ("the Property"). The Staceys allege that Helen Stacey resided at the Property with her husband, Andrew Stacey, now deceased, until July 1, 1997, when they were ordered to vacate the Property because heavy rain had flooded the cellar. Raymond Stacey allegedly resided at the Property for much of his life and accumulated personal property at the Property. On or about November 7, 2000, after extensive legal proceedings in the Pennsylvania state courts, the City of Hermitage demolished the Property pursuant to a demolition notice that had been issued to the Staceys. The Staceys claim that the demolition of the Property occurred without providing the Staceys with due process. The Staceys sued various defendants in this case, ranging from the City of Hermitage, its lawyers, Stacey's former lawyers, the trial judge, the Prothonotary, and any person or entity who had any involvement with the demolition of Helen Stacey's property.

Although the federal Complaint does not clearly set forth each of the claims for relief, it appears that the following claims are asserted: (1) claims under the

Fourth, Fifth, Ninth, and Fourteenth Amendments pursuant to 42 U.S.C. §1983 (2) a civil conspiracy claim under RICO, 18 U.S.C. §1961, *et seq.*; and, (3) claims for violations of various Pennsylvania criminal statutes, 18 Pa.C.S. §911 and 18 Pa.C.S. §4910.

In the federal Complaint, the Staceys' allegations against Sereday are limited to the following:

> 15. Defendants Richard Sereday and Roseann Sereday, doing business as Sereday Excavating, ran a heavy equipment demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them the contract to demolish plaintiffs (sic) family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

In the Prayer for Relief, the Staceys request: (1) a declaration that Helen Stacey was entitled to an appeal as of right from the decree nisi issued to her in Pennsylvania state court; (2) an injunction prohibiting foreclosure on the City's lien and ordering the City to remove the lien for demolition charges; (3) judgment in the amount of $2,000,000; and (4) an award of costs and attorneys' fees.

Before the Staceys filed the federal court action on November 6, 2002, the Property was the subject of

litigation in various Pennsylvania state courts. The Court of Common Pleas of Mercer County, the Commonwealth Court of Pennsylvania, and the Pennsylvania Supreme Court have all reviewed, or have been asked to review, the legality of the demolition of the Property. *See Stacey v. City of Hermitage*, 789 A.2d 772 (Pa.Cmwlth. 2002), *appeal denied*, 569 Pa. 727, 806 A.2d 865 (2002), *cert. denied*, 123 S.Ct. 1784, 155 L.Ed.2d 666 (2003). The Pennsylvania Commonwealth Court aptly described the history of the state court action as follows:

> In 1997, the City informed [Helen] Stacey that her property was in violation of the City's property maintenance code and that, therefore, it was proceeding to have her property declared a public nuisance. In 1998, the City adopted a new property maintenance code, which mirrors the Building Officials and Code Administrators National Property Maintenance Code (BOCA Code). Consequently, the City notified [Helen] Stacey that her property was in violation of the BOCA Code and that any corrective action had to be completed within thirty days.
>
> [Helen] Stacey appealed to the City of Hermitage Board of Appeals (Board). The Board held a hearing on April 15, 1999 and, upon conclusion, determined that

Stacey's structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth, a fire hazard and in danger of collapse.

[Helen] Stacey appealed. By order dated April 19, 2000, the trial court affirmed the Board's determination in all respects except one. It reversed the Board's determination that Stacey's property constituted a fire hazard. No appeal was taken from that order.

Thereafter, the City began proceedings to have the structure demolished. On June 1, 2000, the City informed [Helen] Stacey that she had the right to cure the structure's problems within thirty days and that if she failed to do so, demolition would follow. On June 30, 2000, Stacey's son, Raymond, requested an extension of time in which to complete the repairs. By that time, Raymond had distributed two loads of sand into the basement. ... The City denied Raymond's request for an extension of time.

On August 30, 2000, [Helen] Stacey filed a petition for special relief in the nature of a temporary injunction against the Board and the City. In her petition, [Helen]

> Stacey alleged that she was arbitrarily denied a hearing before the Board on the issue of demolition, that she was not notified of her right to appeal the City's decision to demolish her residence, and that the structure had value and could be restored. ....
>
> The trial court issued an order granting the temporary injunction and set a permanent injunction hearing for September 5, 2000. At the conclusion of the hearing, the trial court determined that 1) it was bound by its April 19, 2000 order concluding that the structure was unsafe, 2) it would be unreasonable to repair the structure where it would have to be taken down to the studs and 3), [Helen] Stacey was not entitled to a hearing before the Board because no timely appeal was filed. Accordingly, the trial court entered a decree nisi vacating the temporary injunction.
>
> [Helen] Stacey took exceptions to the decree nisi. On November 6, 2000, the trial court entered an order affirming its prior decree. The following day, November 7, 2000, the City demolished the structure. ...

Stacey, 789 A.2d at 773-774.

The Pennsylvania Commonwealth Court affirmed the decision of the Court of Common Pleas of Mercer County and held as follows:

> 1. Helen Stacey could not argue that the Board erred in concluding that her structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth and in danger of collapse. The Board's determination was affirmed by the trial court's order and Helen Stacey's failure to appeal the trial court's order precluded her from challenging that determination before the Commonwealth Court, *Id.*, 789 A.2d at 774;
>
> 2. The record clearly demonstrated that Helen Stacey did not appeal the City's Notice of Demolition and, in fact, asked for an extension of time to make repairs. Therefore, the trial court's conclusion that Helen Stacey was not entitled to a hearing on the issue of demolition was correct, *Id.*, 789 A.2d at 775;
>
> 3. Helen Stacey's argument that the City denied her an opportunity to make repairs or sell her property were without merit because the record showed that Helen Stacey was on notice as early as 1997 that

her structure was in violation of the City's property maintenance code, *Id.*;

4. Helen Stacey's argument that the City denied her the right to sell her property was without merit because there was no evidence of documentation showing that compliance with Section 107.5 of the BOCA Code was underway, *Id.*;

5. Helen Stacey failed to establish that the City denied her access to the structure to remove her personal items before the demolition, *Id.*;

6. Helen Stacey was afforded due process throughout the proceedings and availed herself of the legal avenues available to her, *Id.*, 789 A.2d at 776;

7. There was sufficient evidence that Helen Stacey had ample opportunity to make the necessary repairs but failed to do so, *Id.*; and,

8. The trial court did not err in determining that demolition of the Stacey structure was the appropriate remedy, *Id.*, 789 A.2d 777.

Helen Stacey requested that the Commonwealth Court reconsider its decision, and the Court denied that

request on January 28, 2002. Helen Stacey then filed a Petition for Allowance of Appeal before the Pennsylvania Supreme Court at Appellate Docket 129 WAL 2002, and her Petition was denied on July 10, 2002. *Stacey v. City of Hermitage*, 569 Pa. 727, 806 A.2d 865 (2002). Helen Stacey filed a Petition for Reconsideration, which was denied on September 24, 2002. Helen Stacey's petition for writ of certiorari was denied by this Court on April 21, 2003. The Staceys did not commence this federal court action until November 6, 2002, more than one month after Helen Stacey's Petition for Reconsideration was denied by the Pennsylvania Supreme Court in the state court action.

REASONS FOR DENYING THE PETITION

I. The Court of Appeals' Application of the *Rooker-Feldman* Doctrine to Helen Stacey's Claims Did Not Conflict with *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, ___U.S. ___, 125 S.Ct. 1517 (2005).

The *Rooker-Feldman* doctrine is derived from 28 U.S.C. §1257 and the understanding that "a United States District Court has no authority to review judgments of a state court in judicial proceedings. Review of such judgments may be had only in [the United States Supreme] Court." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 117, 43 S.Ct. 288, 67 L.Ed. 556 (1923). This doctrine precludes

lower federal courts from exercising jurisdiction over claims that were actually litigated in state court or are inextricably intertwined with a state court adjudication. *Parkview Associates Partnership v. City of Lebanon*, 225 F.3d 321, 325 (3d Cir. 2000); *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 840 (3d Cir. 1996) (The *Rooker-Feldman* doctrine has been extended to encompass final decisions of lower state courts.)

In the recent case of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, ____ U.S. ____, 125 S.Ct. 1517 (2005), this Court addressed the application of the *Rooker-Feldman* doctrine. Contrary to the Staceys' contentions, although the Court of Appeals did not consider *Exxon Mobil*, its decision that the *Rooker-Feldman* doctrine precluded some of Helen Stacey's claims did not conflict with *Exxon Mobil*. This case is different from the situation addressed in *Exxon Mobil* and is precisely the type of situation where the *Rooker-Feldman* doctrine should apply.

This Court observed that in both *Rooker* and *Feldman*, the plaintiffs had litigated and lost in state court and in their federal complaints were requesting that the federal district courts review and reverse unfavorable state court judgments. *Exxon Mobil*, 125 S.Ct. at 1521. In *Rooker* and *Feldman*, this Court held that such suits were properly dismissed for lack of subject matter jurisdiction since federal district courts lack the requisite appellate authority to review state court judgments. *Id.* at 1522.

In *Exxon Mobil*, two subsidiaries of Exxon Mobil formed joint ventures with Saudi Basic Industries Corp. (SABIC). *Id.* at1524-25. A dispute developed between the parties regarding royalties that SABIC was charging for sublicenses. *Id.* at 1525. SABIC sued the two subsidiaries in Delaware Superior Court in July 2000 seeking a declaratory judgment that the royalty charges were proper. *Id.* Two weeks later, Exxon Mobil and its two subsidiaries sued SABIC in federal court, alleging that SABIC overcharged the joint ventures for the sublicenses. *Id.* The state court action went to trial in March 2003 and the jury returned a verdict of over $400 million in favor of the subsidiaries. *Id.*

Before the state court trial, SABIC filed a motion to dismiss the federal court action on various grounds, but not including the *Rooker-Feldman* doctrine. *Id.* The federal district court denied the motion to dismiss and SABIC took an interlocutory appeal. *Id.* The Court of Appeals heard argument after the state court jury verdict and, *sua sponte*, raised the issue of whether the *Rooker-Feldman* doctrine deprived the federal district courts of subject matter jurisdiction because Exxon Mobil's claims had already been litigated in state court. *Id.* The Court of Appeals rejected Exxon Mobil's argument that *Rooker-Feldman* did not apply because the federal complaint had been filed before the state court judgment. *Id.* The Court of Appeals held that once Exxon Mobil's claims had been litigated to a judgment in state court, the federal court action was precluded by the *Rooker-Feldman* doctrine. *Id.* at 1526.

This Court reversed the judgment of the Court of Appeals and held that "[w]hen there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court." *Id.* This Court also held that the *Rooker-Feldman* doctrine is confined to cases brought by state court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Id.* at 1521-1522. This Court also explained that the *Rooker-Feldman* doctrine does not apply where the federal plaintiff asserts "some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party." *Id.* at 1527, *citing GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993).

Unlike the situation in *Exxon Mobil*, this case presents the "paradigm situation in which *Rooker-Feldman* precludes a federal district court from proceeding." *E.B. v. Verniero*, 119 F.3d 1077, 1090-1091 (3d Cir. 1997). In this case, the federal court action was not commenced until well after the state court proceedings had ended.

More importantly, in the federal court action, certain claims asserted by Helen Stacey, including her claims against Sereday, sought to overturn or nullify the decision of the state court. These claims were based upon the allegation that her property was demolished without adequate notice or due process. However, before the Staceys filed the federal court action, the

Pennsylvania state courts had determined that Helen Stacey was provided with adequate notice and due process with respect to the demolition.

Therefore, since Helen Stacey's claims relating to the demolition were previously litigated in the Pennsylvania state courts, the Court of Appeals properly determined that the District Court did not have subject matter jurisdiction over these claims under the *Rooker-Feldman* doctrine.

In addition, it is clear that some of Helen Stacey's other claims in this case are so inextricably intertwined with claims that were previously litigated in the Pennsylvania state courts that if she succeeded in this case, the decisions of the Pennsylvania state courts would be effectively nullified. For purposes of the *Rooker-Feldman* doctrine, there are two circumstances where a federal claim and a state claim are inextricably intertwined: (1) when in to order grant the relief sought, the federal court must determine that the state court judgment was erroneously entered; and, (2) when the federal court must take action that would render the state court's judgment ineffectual. *Desi's Pizza v. Wilkes-Barre*, 321 F.3d 411, 420-421 (3d Cir. 2003).

In order for the District Court to find that the demolition violated due process, it would have to determine that the Pennsylvania state courts erred and render the judgment of the Pennsylvania state courts void. In other words, the only way that Helen Stacey could prevail on certain claims is for the District Court

to overrule the Pennsylvania Commonwealth Court by reinstating an appeal that the Commonwealth Court held was not actionable.

The gist of this lawsuit is that Helen Stacey was not afforded proper notice or an opportunity to present evidence in the Pennsylvania state court proceedings. The Commonwealth Court clearly held that it "...was evident that Stacey was afforded due process throughout the proceedings and availed herself of the legal avenues available to her." *Stacey*, 789 A.2d at 777. A decision in favor of Helen Stacey on certain claims could never be reconciled with the decision of the Commonwealth Court that the procedure utilized in the demolition of Helen Stacey's property was legal and followed due process.

Furthermore, as to Sereday and certain other Respondents, Helen Stacey has not raised any independent claims in this lawsuit. All of Helen Stacey's claims against Sereday and certain other Respondents are based upon the demolition which the Pennsylvania state courts have concluded was legal and in compliance with due process. In this lawsuit, Helen Stacey is attacking the judgment of the Pennsylvania state courts that the demolition was legal and complied with due process. Her claims against Sereday and certain other Respondents do not allege an injury that was not considered by the Pennsylvania state courts.

Therefore, because certain claims asserted by Helen Stacey in this lawsuit are inextricably intertwined

with her state court claims that were previously litigated, the Court of Appeals properly applied the *Rooker-Feldman* doctrine to these claims.

II. The Court of Appeals Properly Applied the *Rooker-Feldman* Doctrine to Raymond Stacey's Claims.

The *Rooker-Feldman* doctrine applies when the federal plaintiff was a party to or in privity with a party to the state court action whose outcome is being challenged. *Brown v. Damiani*, 154 F.Supp.2d 317, 325 (D. Conn. 2001).[1] The *Rooker-Feldman* doctrine binds not only the parties to the prior state court suit, but also their privities. *ITT Corp. v. Intelnet International Corp.*, 366 F.3d 205, 216, n. 19 (3d Cir. 2004). Parties in privity

---

1 There are some courts that have applied the *Rooker-Feldman* doctrine against parties who did not participate in the state court action. *See Lemonds v. St. Louis County*, 222 F.3d 488 (8th Cir. 2000); *T.W. & M.W. v. Brophy*, 124 F.2d 893, 898 (7th Cir. 1997); *Republic of Paraguay v. Allen*, 949 F.Supp. 1269, 1273 (E.D. Va. 1996), *aff'd on other grounds*, 134 F.3d 922, 628 (4th Cir. 1997); *Williams v. Atkinson*, 792 F.Supp. 755, 761-63 (M.D. Ala. 1992), *aff'd*, 987 F.2d 774 (11th Cir. 1993). Indeed, the court in *Lemonds* noted that insisting that parties must be identical confuses the *Rooker-Feldman* doctrine with principles of *res judicata*. *Lemonds*, 222 F.3d at 495. While *res judicata* is concerned with the impropriety of allowing parties "two bites at the apple," the *Rooker-Feldman* doctrine is concerned with federalism and the proper delineation of the power of the lower federal courts. *Id.* However, the Third Circuit has held that *Rooker-Feldman* does not bar claims by parties who were not participants in the prior state court action. *FOCUS*, 75 F.3d at 840.

are those who have "mutual or successive relationships to the same legal right of property," or have "such an identification of interest of one person with another as to represent the same legal right." *Ammon v. McCloskey*, 655 A.2d 549, 554 (Pa.Super. 1995). "A nonparty is in privity with a party, when the party adequately represents the nonparty's legal interest in the first proceeding." *In re Estate of Royal*, 289 B.R. 913, 919 (N.D. Ill. 2003), *quoting In re Raleigh v. Haskell*, 1998 WL 809520, at *4 (Bankr. N.D. Ill.). "It is the identity of interests that controls in determining privity, not the nominal identity of the parties." *Id.*

In this case, Raymond Stacey is in privity with Helen Stacey as to claims arising out of the demolition of the Property. Raymond Stacey alleges that certain personal property belonging to him was destroyed in the demolition. Thus, Raymond Stacey's property interests which were allegedly affected by the demolition were the same as those of Helen Stacey in the state court action. With respect to the issues surrounding the demolition, the interests of Raymond Stacey and Helen Stacey were identical.

Moreover, as in the case of Helen Stacey's claims, Raymond Stacey's claims relating to the demolition were inextricably intertwined with Helen Stacey's state court claims. In order for Respondents to be found liable to Raymond Stacey for any alleged constitutional violations or damages arising out of the demolition, the District Court would have to nullify the state court decision that the demolition was legal and complied with due process.

Therefore, because Raymond Stacey was in privity with Helen Stacey and his claims relating to the demolition were inextricably intertwined with Helen Stacey's state court claims, the Court of Appeals did not err in applying the *Rooker-Feldman* doctrine to Raymond Stacey's claims relating to the demolition of Helen Stacey's property.

III. The Court of Appeals Properly Disposed of the Staceys' Claims.

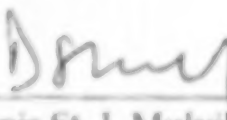
The Staceys claim that the Court of Appeals erred in affirming the District Court's decision to grant all the motions to dismiss "for all of the reasons stated therein." (Petition's App. 13) This contention is a mischaracterization of the Court of Appeals' decision. The Court of Appeals affirmed in part and vacated in part the order of the District Court. The Court of Appeals affirmed the District Court's decision to dismiss some of the Staceys' claims pursuant to the *Rooker-Feldman* doctrine. Of those claims that were not barred by *Rooker-Feldman*, the Court of Appeals held that certain claims were properly dismissed on other grounds and that claims of legal malpractice and claims relating to the lien filed by the City of Hermitage should not have been dismissed. The Court of Appeals' decision did not address the merits of those claims barred by the *Rooker-Feldman* doctrine.

Therefore, the Staceys' contention that the Court of Appeals' disposition of their claims was improper is without merit.

CONCLUSION

Petitioners fail to set forth adequate grounds for granting their Petition for Writ of Certiorari and, therefore, their Petition should be denied.

Respectfully submitted,



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(3)

Supreme Court, U.S.
FILED
SEP 23 2005
OFFICE OF THE CLERK

No. 05-199

IN THE

Supreme Court of the United States

RAYMOND STACEY, INDIVIDUALLY AND AS CO-EXECUTOR OF THE LAST WILL OF HELEN STACEY
Petitioners

v.

CITY OF HERMITAGE, ET AL.
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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September 23, 2005

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ARGUMENT

Respondents, the Seredays, in their Brief in Opposition are moving in the wrong direction when they attempt to resurrect a line of legal analysis rejected *in toto* by the unanimous U.S. Supreme Court in the recently decided ***Exxon Mobil***. The school of thought embraced by the defendants is now history. See *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. ----, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005) (herein "***Exxon Mobil***").

We appear to be looking here at a kind of variation on the theme of locking the barn door after the horse is gone; respondents are instead attempting to lock and bar the door to the courthouse after the litigants are inside.

It is necessary to begin our response by reiterating the basics: that the Third Circuit Court of Appeals wrongly decided the Staceys' appeal because it insisted on embracing the idea that the ***Rooker-Feldman*** doctrine could be expanded to incorporate preclusion law. The Third Circuit also erred when it adopted the idea that federal district courts under ***Rooker-Feldman*** lack jurisdiction over any claims identical to those on which state courts have rendered a final judgment. The Third Circuit in *Stacey*, in full reliance on ***Exxon I***, wrongly concluded that if "claims were actually litigated in state court, the District Court [has] no jurisdiction to entertain them. See id. at 106." *Stacey v. City of Hermitage* (unreported, see Petition at App. 7); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 364 F.3d 102, 106 (3rd Cir.2004) (herein "***Exxon I***").

This line of analysis was soundly rejected by the U.S. Supreme Court when it overruled ***Exxon I***, and held that the jurisdictional ***Rooker-Feldman*** doctrine is not preclusion-based.

The U.S. Supreme Court has rejected absolutely the application of ***Rooker-Feldman*** to bar adjudication of claims in federal court simply because identical claims were brought in state court.

It is now a settled precedent of this Court that the ***Rooker-Feldman*** doctrine does not apply where the federal plaintiff asserts "some independent claim, ***albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party***." ***Exxon Mobil***, at 1527, quoting *GASH Associates v. Village of Rosemont, Ill.*, 995 F.2d 726, 728 (7th Cir. 1993). (Emphasis added).

"[N]either *Rooker* nor *Feldman* supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment ***on the same or related question*** while the case remains *sub judice* in a federal court." ***Ibid***. (Emphasis added).

"Disposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law", i.e., the Full Faith and Credit Act, 28 U.S.C. § 1738. It is now settled precedent that "federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court." ***Ibid***. "*Rooker* -*Feldman* is not triggered simply by the entry of judgment in state court. ***Id***., at 1526.

The Third Circuit grievously erred when it reasoned that the District Court lacked jurisdiction under the ***Rooker-Feldman*** doctrine over any claims identical to those in which the state court reached a final judgment in Helen Stacey's case, *Stacey v. City of Hermitage* (unpublished, see Petition at App. 7).

As Justice Ginsburg noted, "the Third Circuit misperceived the narrow ground occupied by *Rooker* -

Feldman, and consequently erred." ***Exxon Mobil***, at 1522. And the U.S. Supreme Court has made clear Section 1257 does ***not*** "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court ***a matter previously litigated in state court***." ***Exxon Mobil***, at 1527 (emphasis added).

As Defendants have accurately stated, the Court of Appeals in ***Exxon I*** (364 F.3d 102 (3rd Cir.2004)), "held that once Exxon Mobil's claims had been litigated to a judgment in state court, the federal court action was precluded by the *Rooker-Feldman* doctrine. *Id.* at 1526." Brief in Opp., at 10.

Defendants also accurately report that "[t]his Court ***reversed*** the judgment of the Court of Appeals and held that '[w]hen there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court.' " Brief in Opp., at 11.

However, respondents have lost all respect for accuracy and are dead wrong when they say that all of Helen Stacey's claims relating to the demolition were previously litigated in the Pennsylvania trial court and in the state's appellate courts.

Mrs. Stacey raised a claim ***in the state trial court*** that she was not provided with adequate notice and due process when she filed her petition for injunctive relief against the City of Hermitage and the City Board of Appeals.

However, when the state trial court entered the order dissolving the injunction sought by Helen Stacey, she was prohibited by a state clerk of court from filing an immediate appeal of the order. She was denied any opportunity for procuring meaningful review of that final order, and she was also prevented from obtaining a stay of the order. See ***pro se*** Complaint ¶¶ 18, 19, 33-35, 40, 41, in the Appendix hereto.

This deprivation of basic rights effected through denial by state actors of her right of access to the courts was never raised in the trial court, and never considered on review by the state appellate courts. It could not have been raised in the trial court because the acts complained of occurred after the trial court proceedings had ended. Since the wrongful conduct and acts were not issues of record in that court, they were claims never reviewed on the merits by the state appellate courts.

The federal District Court cannot and will not reinstate the injunction that was dissolved by the state trial court; neither can the District Court stay the demolition of the Stacey home, nor resurrect the edifice and the unique belongings that were destroyed.

To summarize, Mrs. Stacey's Estate ***is not*** seeking to overturn or void the dissolution of the injunction in the state trial court, but ***is seeking*** to vindicate rights which are federal in nature, and ***is seeking*** relief from injuries inflicted by the wrongful conduct of the Defendants as distinct from the kind of loss suffered in state court.

Rooker-Feldman applies ***only*** when the injuries of which the federal plaintiff complains were caused by the state-court judgment itself, rather than an independent, out-of-court or later injury that the state court did not consider.

The respondents, the Seredays, along with City personnel actually destroyed the Stacey home and uncondemned personal property without warrants immediately after the trial court's final order was entered on November 6, 2000. The state appellate court in its opinion misstated that date as November 7 because the facts of the actual demolition were not on record, and the Staceys were never given the opportunity to inquire or have a hearing into the matter.

(Helen) Stacey v. City of Hermitage, 789 A.2d 772, 774 (Pa.Commw.Ct. 2001).

Helen Stacey complained of injuries caused by Defendants' wrongful acts that are independent and distinct from injuries caused by dissolution of the injunction in the state trial court. See the ***pro se*** Complaint ¶¶ 15, 20-21, 37-38, 42-43, 52-54, 56 in the Appendix (R.App. 1-16)

The gist of this case is found in the Petitioners' ***pro se*** Complaint, which the Third Circuit failed to consider fully and construe liberally as true under *Estelle v. Gamble*, 429 U.S. 97 (1976). Some of Staceys' ***pro se*** allegations against the Seredays and the City of Hermitage are as follows:

> 56. In doing the acts and things complained of...the defendants were conspirators engaged in a scheme and conspiracy designed, intended to, and which in fact did, deny and deprive plaintiffs of rights guaranteed under the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution....
>
> 15. Defendants Richard Sereday and Roseann Sereday, doing business as Sereday Excavating, ran a heavy equipment demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them the contract to demolish plaintiffs['] family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.
>
> 20. Helen Stacey was the owner of a large brick building, (the family home), located at 1560 East State Street, Hermitage, Pennsylvania, where she had lived with her family for over 50 years, accumulating a great deal of personal property there, including private papers, tax returns, receipts and family photos.

21. Helen's son Raymond had lived in the family home much of his life and also accumulated personal property there, including private papers, receipts, collectibles and original art work.

37. On November 6, 2000, the City seized the property with force by entering the family home without plaintiffs' consent, using heavy equipment to demolish the structure and removing material from the premises.

38. While plaintiff's [Helen Stacey's] case was still pending in the state court system, the City in demolishing the family home destroyed the structure and its contents as evidence so it would not be available for further proceedings, such destruction being in violation of the Pennsylvania Crimes Code [18 Pa.C.S. §] 4910.

42. The City seized the property with force by entering the family home and demolishing the structure and all its contents without first obtaining a warrant. Among the items destroyed were private papers, tax returns, books, original artwork, collectibles and family photos.

43. The City's demolition of the real and personal property denied plaintiffs the value of the property and deprived them of their civil rights.

52. By demolishing plaintiffs home without adequate prior notice and by failing to provide plaintiffs with an opportunity for a meaningful hearing to dispute the alleged grounds for the emergency demolition, the defendants, acting under color of state law, have deprived plaintiffs of their property without due process of law in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

53. By entering with force and searching plaintiffs home without warrants and without consent, defendants, acting under color of state law, have violated plaintiffs right to be free from unreasonable searches under the Fourth Amendment to the United States Constitution and 42 [U.S.C.] § 1983.

54. By entering with force and searching plaintiffs home without warrants and without consent, and forcibly seizing plaintiffs home without adequate due process of law, defendants acting under color of state law, have violated plaintiffs right to privacy under the Fourth, Fifth and Ninth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

It is clear that Helen Stacey complained of wrongful seizures of property without warrants by the Seredays and the City, and their participation in the destruction of her legal claim, i.e., the res of the injunction (the home) and injunctive relief itself, before appellate review could be had, in violation of the First, Fourth and Fourteenth Amendments to the U.S. Constitution.

These are certainly ***independent claims*** as so defined by the U.S. Supreme Court in ***Exxon Mobil***.

———— ♦ ————

In Part II of their brief, Defendants do not and cannot debate the fact that Plaintiff Raymond Stacey was ***not a party*** to the state court action by his mother Helen Stacey. However, it is disingenuous in the extreme (and cheeky) for them to advocate that the U.S. Supreme Court when reversing the Third Circuit in ***Exxon I*** makes it possible for the ***Rooker-Feldman*** doctrine to apply to a party in privity with a party to the state court action.

For this startling proposition, Defendants rely on *ITT Corp. v. Intelnet international Corp.*, 366 F.3d 205, 216, n. 19 (3d Cir. 2004).

No such statement as to any form of privity triggering a ***Rooker-Feldman*** bar to federal jurisdiction can be found anywhere in the text of ***Exxon Mobil***.

In *ITT Corp*, the Third Circuit again "misperceived" the scope of ***Rooker-Feldman*** as it did in ***Exxon I***. It held that federal jurisdiction was barred if the claim was actually litigated in state court. The court in *ITT* stated with enthusiasm that '[t]he "actually litigated" test is a recent development unique to our Court.' *ITT*, at 210. It was indeed a test unique to the Third Circuit, and a test that brought it into conflict with other Circuit Courts of Appeals.

This so-called "test" has been discarded (perhaps brutally); it is not now and never was an element of the proper standard of review. *ITT* directly relied on the line of reasoning employed in ***Exxon I***:

> The opinion of our Court in *Exxon Corp. v. Saudi Basic Industries Corp.*, 364 F.3d 102 (3d Cir.2004) [***Exxon I***], ***borrowing from preclusion concepts***, concluded that "[c]laims and issues decided against an entity bind also its parties in privity" for *Rooker-Feldman* purposes. (Emphasis added).

ITT, at 216 n. 19. *ITT*, as a consequence of this reliance on a rejected line of authority, is now bad law.

Justice Ginsburg [illegible]t that the ***Rooker-Feldman*** doctrine ***is distinct*** from t[illegible]ffirmative defense of prelusion. Preclusion in federal litigation following a judgment in state

court depends on the application of the Full Faith and Credit Act, 28 U.S.C. § 1738 (and not the ***Rooker-Feldman*** doctrine). ***Exxon Mobil***, at 1527

The ***Rooker-Feldman*** doctrine should never be confused with the concept of res judicata. It is an impossibility, after ***Exxon Mobil***, to "borrow" from preclusion law to conclude that claims and issues directed *against* an entity bind also its parties in privity as a bar to federal jurisdiction under ***Rooker-Feldman***.

Ammon v. McCloskey, 655 A.2d 549 (Pa.Super. 1995), like *ITT*, speaks only to the concept of privity for purposes of the role of collateral estoppel or issue preclusion. As the U.S. Supreme Court has made clear, preclusion has nothing to do with the use of ***Rooker-Feldman*** to bar a nonparty's access to a federal forum.

The U.S. Supreme Court has spoken on this subject. It has advised us that ***Rooker-Feldman*** does not bar individual constitutional claims raised in federal court by persons not parties to earlier state court litigation.

In *FOCUS v. Allegheny Ct. of Common Pleas*, 75 F.3d 834 (3d Cir. 1996), the Third Circuit, in conformance with Supreme Court authority on the subject, held that ***Rooker-Feldman*** was no bar to a federal forum for non-parties to a state action. The U.S. Supreme Court in ***Exxon Mobil*** re-emphasized that the doctrine has no application to a federal suit brought by a nonparty to the state suit, citing *Johnson v. De Grandy*, 512 U.S. 997 (1994). ***Exxon Mobil***, at 1523.

In light of the unanimous decision in ***Exxon Mobil***, whatever foreign jurisdictions have to say about privity in connection with res judicata must conform with Supreme Court guidance on the use of the ***Rooker-Feldman*** doctrine in regard to a nonparty's access to a federal forum.

Respondents ought to read ***Exxon Mobil*** from cover to cover when they have any doubts on this subject.

Plaintiff-Petitioners have stated that the Court of Appeals affirmed in part and vacated in part the order of the District Court. See Petition at 9 and 23. There is no debate as to the fact that the Third Circuit's decision did not address the merits of claims it held barred by the ***Rooker-Feldman*** doctrine. Part III of Respondents' Brief raises nothing new as a point of contention.

CONCLUSION

For these reasons, and those discussed more fully in the Petition, the Court should grant the Petition for Writ of Certiorari, reverse the judgment of the Third Circuit Court of Appeals, and order the Staceys' claims be reinstated.

Respectfully submitted,

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Date: September 23, 2005

REPLY APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HELEN STACEY 2220 High St Apt 611 Cuyahoga Falls, OH 44221	:	Civil Action No. 02 1911
and	:	COMPLAINT FOR DECLARATORY
RAYMOND STACEY 123 Hickory Ln SW Warren OH 44481	:	AND INJUNCTIVE RELIEF AND FOR DAMAGES
Plaintiffs	:	Jury Demand Endorsed Hereon
vs	:	
CITY OF HERMITAGE 800 N Hermitage Rd Hermitage PA 16148	:	
GARY P HINKSON, Individually and in Official Capacity as City Manager of Hermitage, 800 N Hermitage Rd Hermitage PA 16148	:	
EDWARD STANTON, Individually and in Official Capacity as Police Chief of Hermitage, 800 N Hermitage Rd Hermitage PA 16148	:	
RUSSELL V PENN JR, Individually and in Official Capacity as City Inspector of Hermitage, 800 N Hermitage Rd Hermitage PA 16148	:	

JEFFERY OSBORNE, Individually :
and in Official Capacity as :
Asst City Inspector of Hermitage :
800 N Hermitage Rd :
Hermitage PA 16148 :
:
ROBERT S GOELTZ, Individually :
and in Official Capacity as :
Fire Marshall of Hermitage, :
800 N Hermitage Rd :
Hermitage PA 16148 :
:
JAMES "PAT" WHITE, Individually: :
and in Official Capacity as :
Commissioner of Hermitage, :
490 Ashland Dr :
Hermitage, PA 16148 :
:
THOMAS W KUSTER, and :
H WILLIAM WHITE III, and :
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Attorney at Law :
Temple Bldg, Suite 214 :
125 E North St :
New Castle PA 16101 :

PENN POWER CO, and :
OHIO EDISON CO, thru :
its Employees and Agents, :
1 East Washington St :
New Castle PA 16101 :
:
RICHARD SEREDAY, and :
ROSEANN SEREDAY, :
doing business as :
SEREDAY EXCAVATING, :
694 Yankee Run Rd :
Masury, OH 44438 :
:
VIROSTICK TRANSFER CO, thru :
its Owners, Employees and Agents, :
159 Pitt St :
Sharon PA 16146 :
:
WODZIANSKI & SMITH INC, thru :
its Owners, Employees and Agents, :
Address unknown :
:
RICHARD G ENGLISH & ASSOC, :
thru Its Owners, Employees :
and Agents, :
191 Connelly Blvd :
Sharon PA 16146 :

*2

THOMAS R DOBSON, :
Individually and in Official :
Capacity as Common Pleas :
Judge of Mercer County, :
Mercer County Courthouse :
North Diamond St :
Mercer PA 16137 :

ELIZABETH F FAIR, :
Individually and in Official :
Capacity as Prothonotary :
of Mercer County, thru :
Her Office, Employees and Agents, :
Mercer County Courthouse :
North Diamond St :
Mercer PA 16137 :
:
Defendants :

JURISDICTION

1. This Court has jurisdiction under 28 USC §§ 1331 and 1343, and 1332, if necessary, and 18 USC §§ 1964 and 1965, if conspiracy is deemed appropriate. This action flows primarily from 42 USC § 1983 and seeks to redress deprivation under color of state law of rights secured to plaintiffs by the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. This Court has supplemental jurisdiction over state claims pursuant to 28 USC § 1367. Jurisdiction is further conferred by 28 USC §§ 2201 and 2202 for declaratory and injunctive relief.

PARTIES

2. Plaintiff Helen Stacey is a citizen of the United States and owner of the property at 1560 East State Street in the City of Hermitage, Mercer County, Pennsylvania. She resided there until July 1, 1997, when she and her husband, Andrew, now deceased, were *3 ordered to vacate the family home by defendant City of Hermitage after a heavy rain flooded the cellar. She now lives at 2220 High St, Apt 611, Cuyahoga Falls, Summit County, Ohio.

3. Plaintiff Raymond Stacey is a citizen of the United States, the son of Helen Stacey and her attorney-in-fact. For most of his live he lived at the family home, but now resides at 123 Hickory Lane SW, Warren, Trumbull County, Ohio.

4. Defendant City of Hermitage (City) is a municipal government organized and operating under the laws of Pennsylvania and is located in Mercer County, Pennsylvania.

5. Defendant Gary P Hinkson is the City Manager of Hermitage responsible for the day-to-day operation, decisions and business of the City. At the time of the occurrences alleged herein, it was his duty to supervise city activities so as not to injure plaintiffs or deprive them of their civil rights.

6. Defendant Edward Stanton is the chief police officer of Hermitage responsible for the police department and as such it was his duty to supervise police activities so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

7. Defendant Russell V Penn Jr is City Inspector and Health Officer of Hermitage responsible for enforcing the provisions of the City Property Maintenance Code and as such conducts housing inspections and issues notices and orders for violations of the Code. At the time of the occurrences alleged herein, it was his duty not to injure plaintiffs or deprive them of their civil rights.

*4

8. Defendant Jeffery Osborne is a city inspector who assists defendant Penn in housing inspections within the City, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

9. Defendant Robert S Goeltz is Fire Marshall of Hermitage and responsible for the operation of the City fire department. At the time of the occurrences alleged herein, it was his duty to supervise fire department activities so as not to cause injuries to plaintiffs or deprive them of their civil rights.

10. Defendant James "Pat" White is an elected commissioner of the City of Hermitage responsible for legislative functions and activities, and as such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

11. Defendants Thomas W Kuster and H William White III are attorneys with the defendant firm of Ekker, Kuster, McConnell & Epstein of Sharon, Pennsylvania. They are solicitors for the City of Hermitage and responsible f or legal advice and services. As such, it was their duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

12. Defendant Christopher Ferry is an attorney with defendant firm Watts & Pepicelli of Meadville, Pennsylvania. They were retained by plaintiff Helen Stacey to handle problems with Hermitage over building code violations with the family home and to help sell the property. As such, the attorneys had a duty not to injure plaintiffs or deprive them of their civil rights at the *5 time of the occurrences alleged herein.

13. Defendant Jerry G Cartwright Jr is an attorney in private practice in New Castle, Pennsylvania. When defendants Ferry and his law firm failed to act in filing a trespass action and getting an injunction against Hermitage, plaintiffs retained Attorney Cartwright to get the injunction and petition the court to order the City to hold a hearing before the City appeals board. As such, Attorney Cartwright had a duty not to injure plaintiffs or deprive them of their civil rights.

14. Defendants Penn Power Company and its parent organization Ohio Edison are electric power utility companies. Penn Power maintains offices in New Castle, Pennsylvania, and is regulated by the Pennsylvania Public Utility Commission. As such, Penn Power had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive plaintiffs of their civil rights at the time of the occurrences alleged herein.

15. Defendants Richard Sereday and Roseann Sereday, doing business as Sereday Excavating, ran a heavy equipment demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them the contract to demolish plaintiffs family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

16. Defendant Virostick Transfer Company is a moving company with offices in Sharon, Pennsylvania, and is regulated by the *6 Pennsylvania Public Utility Commission. As such, its owners had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

17. Defendant Wodzianski & Smith of an unknown address and defendant Richard G English & Associates of Sharon, Pennsylvania, were hired in October/November 2000 by the City of Hermitage to inspect and appraise plaintiffs family home. As such, these defendants had a duty to supervise its employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

18. Defendant Thomas R Dobson is a judge of the Court of Common Pleas in Mercer County, Pennsylvania, and as

such it was his duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

19. Defendant Elizabeth F Fair is the prothonotary of the Court of Common Pleas in Mercer County, Pennsylvania, and as such it was her duty to supervise the activities of her office, employees and agents so as not to cause injuries to plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.

FACTS

20. Helen Stacey was the owner of a large brick building, (the family home), located at 1560 East State Street, Hermitage, Pennsylvania, where she had lived with her family for over 50 years, accumulating a great deal of personal property there, including private papers, tax returns, receipts and family photos.

*7

21. Helen's son Raymond had lived in the family home much of his life and also accumulated personal property there, including private papers, receipts, collectibles and original art work.

22. The City demolished the structure located at 1560 East State Street and in doing so knowingly destroyed evidence so it was not available for any official proceeding.

23. The structure was not a hazard to life, health or safety, and not about to collapse, having withstood the heavy snows of three winters and one earthquake.

24. There were alternatives to demolition, including buyers willing to make repairs acceptable to the City.

25. The City demolition occurred without providing plaintiffs with due process.

26. The City letter of 6/1/2000 sent to plaintiff contains no warning that the City will demolish the home if repairs are not made and does not advise of the right to appeal.

27. Plaintiffs placed three truckloads of dirt into the cellar of the structure to support the foundation, but the City ignored plaintiffs request for an extension of time to continue the repairs.

28. Plaintiffs requested a hearing at the City board of appeals from the demolition notice of 8/1/2000 to consider repairs in progress, the sale of the property to a buyer willing to make the repairs, and time to remove vast amounts of personal property from the family home.

29. Defendant Attorney White summarily refused to convene the City board, denying plaintiffs the opportunity to be heard on *8 the demolition itself and the procedure for inventory of items to be taken or salvaged, as required by City ordinance.

30. Plaintiffs asked defendants Ferry and his firm to file an action in trespass and get an injunction to prevent the demolition. When they failed to act, plaintiffs in a panic rush retained defendant Attorney Cartwright.

31. On August 28 and August 31, 2000, defendants Police Chief Stanton, City Attorney White, Commissioner White, Inspectors Penn and Osborne, workmen from Penn Power and from Virostick Transfer Co, in concert with others, broke in, searched for evidence and seized personal property without consent, warrant or court order. At one point, Police Chief Stanton reached through the open front door, grabbed and dragged plaintiff Raymond Stacey outside, threatening him with arrest for defiant trespass if he again interfered.

32. City Defendants were continuing a pattern of threat and violence going back two years when they boarded up the home to keep the family and its contractor out, and took the family pickup truck still in running order to a secret place, while ordering the buyer of the truck off the property with threats of arrest.

33. Plaintiffs [Helen Stacey was] issued a temporary injunction preventing demolition at the cost of a $50,000 bond in favor of the City.

34. The temporary injunction was vacated a few days later by defendant Judge Dobson after a hearing where plaintiffs [Helen Stacey] did not have the opportunity to present testimony of contractors and engineers, together with their reports, because plaintiffs Attorney Cartwright failed to ask for and get a continuance.

*9

35. Plaintiff Helen Stacey, through Attorney Cartwright, filed an immediate notice of appeal which by fraud or bad faith in the Mercer County court system on the part of defendants Judge Dobson and Prothonotary Fair, was not docketed or processed per the Pennsylvania Rules of Appellate Procedure, and Plaintiff's motion for appellate stay was rejected despite the fact her $50,000 trial bond was still active in favor of the City.

36. In October or November 2000, upon information and belief, defendants Wodzianski & Smith Inc and Richard G English & Associates, through its owners, employees and agents, together with City defendants and unknown members of the City Fire Department entered and searched the Stacey home without consent, warrant or court order.

37. On November 6, 2000, the City seized the property with force by entering the family home without plaintiffs'

consent, using heavy equipment to demolish the structure and removing material from the premises.

38. While plaintiff's [Helen Stacey's] case was still pending in the state court system, the City in demolishing the family home destroyed the structure and its contents as evidence so it would not be available for further proceedings, such destruction being in violation of the Pennsylvania Crimes Code 4910.

39. Defendant Cartwright as plaintiff's attorney failed to attend the final hearing on November 6, 2000. He failed to perfect plaintiff's notice of appeal of 9/7/2000 and failed to secure an appellate stay to protect plaintiff's home.

***10**

40. Defendant Judge Dobson was not impartial and showed bias against plaintiffs. He threatened [federal] plaintiff Raymond Stacey with jail for zealously pursuing the truth at [the state] trial. The judge prevented the processing of plaintiff's [Helen Stacey's] notice of appeal of 9/7/2000 when the temporary injunction was vacated by the decree nisi which changed the status quo between the parties and is appealable as of right under Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate Procedure. The judge had discussions about the case with the City's attorney outside the presence of plaintiff or plaintiff's attorney.

41. On November 6, 2000, when the final decree was entered on the docket, defendants Judge Dobson and Protonotary Fair made no effort to have plaintiff's [Helen Stacey's] notice of appeal processed as required by Rule 905 of the Rules of Appellate Procedure:

> Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date...which date shall be shown on the docket...A notice of appeal filed...before the entry of an appealable order shall be

> treated as filed after such entry and on the day thereof.
>
> • • •
>
> The clerk shall immediately transmit to...the appellate court...a copy of the notice of appeal showing the date of receipt

42. The City seized the property with force by entering the family home and demolishing the structure and all its contents without first obtaining a warrant. Among the items destroyed were private papers, tax returns, books, original artwork, collectibles and family photos.

43. The City's demolition of the real and personal property denied plaintiffs the value of the property and deprived them of their civil rights.

*11

44. The City has filed a written lien on the property at 1560 East State Street for more than the amount of the demolition cost.

45. The City filed the lien for more than the cost of demolition without providing plaintiffs the opportunity for a due process hearing on whether the lien should be assessed and whether the amount of the lien was proper.

46. The City's imposition of the lien for demolition costs on the property clouds the title to the property.

47. The City is a corrupt organization and in doing the acts and things complained of the defendants were conspirators engaged in a scheme and conspiracy designed and intended to, and in fact did deny and deprive plaintiffs of Constitutional rights.

[No para. 48]

49. Specifically, defendants conspired to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the zoning embarrassment of plaintiffs family home. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by the City's retaliatory denial to plaintiffs of a building permit to rebuild the nonconforming structure.

50. Defendant City of Hermitage is a corrupt organization and with other defendants created a conspiracy that should be investigated under the Pennsylvania Crimes Code 18 Pa.CS § 911 and the federal RICO Act 18 USC § 1961 et seq. In furtherance of the conspiracy, defendants have carried on interstate activity by *12 using the United States mails and telephone service, and plaintiffs have been damaged thereby.

51. Defendants acted intentionally, maliciously, recklessly and with a callous indifference to the rights of each of the plaintiffs.

CLAIMS FOR RELIEF

52. By demolishing plaintiffs home without adequate prior notice and by failing to provide plaintiffs with an opportunity for a meaningful hearing to dispute the alleged grounds for the emergency demolition, the defendants, acting under color of state law, have deprived plaintiffs of their property without due process of law in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

53. By entering with force and searching plaintiffs home without warrants and without consent, defendants, acting under color of state law, have violated plaintiffs right to be free from unreasonable searches under the Fourth Amendment to the United States Constitution and 42 [U.S.C.] § 1983.

54. By entering with force and searching plaintiffs home without warrants and without consent, and forcibly seizing plaintiffs home without adequate due process of law, defendants acting under color of state law, have violated plaintiffs right to privacy under the Fourth, Fifth and Ninth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

*13

55. Defendants actions, performed under color of state law, including, but not limited to, entering with force, searching and seizing plaintiffs home, and the breakdown of the Mercer County court system, under false pretenses and without warrants or consent when no emergency existed, were arbitrary and unreason-able, without substantial relation to public health, safety or public welfare, and as such violated plaintiffs right to substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

56. In doing the acts and things complained of above, the defendants were conspirators engaged in a scheme and conspiracy designed, intended to, and which in fact did, deny and deprive plaintiffs of rights guaranteed under the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, and 18 USC §§ 1961 et seq and the Pennsylvania Crimes Code 18 Pa.CS Sec. 911.

57. Specifically, defendants conspired to use the Hermitage Property Maintenance Code and the authority granted housing inspectors to remove the zoning embarrassment of plaintiffs family home. The structure had no front or side yard setbacks, jutted out onto the main commercial highway and aesthetically discouraged development, which was evident by the City's retaliatory denial to plaintiffs of a building permit to rebuild, the nonconforming structure.

58. The City of Hermitage's unilateral determination of the demolition charges and imposition of a lien against plaintiff Helen Stacey's property for the collection of the charges injured *14 plaintiff by impairing title to the property. The City's failure to provide plaintiff with a due process hearing prior to the assessment of the charges and the imposition of the lien on her real property to secure the payment of those charges violated the due process requirement of the Fifth and Fourteenth Amendment to the United States Constitution and 42 [U.S.C.] § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray this Court grant the following relief:

Enter judgment declaring that plaintiff Helen Stacey was entitled to an appeal as of right from the decree nisi issued in her state court case pursuant to Rule 311(a)(4)(ii) of the Pennsylvania Rules of Appellate Procedure.

Enter an injunction prohibiting the foreclosure of the City's lien on plaintiff's property, ordering the City to remove the lien for demolition charges from all public records.

Enter judgment for the plaintiffs against defendants for compensatory and punitive damages in the amount of $2,000,000.00

Enter an order that defendants pay court costs and attorneys' fees in this action pursuant to 42 § 1988.

Grant such other relief as the Court deems just and proper.

Respectfully submitted,

s/ Helen Stacey
1-21-2003

Date: November 6, 2002

Helen Stacey
BY s/ Raymond Stacey

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